



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

SFUND RECORDS CTR
2166-06705

May 4, 1994

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James W. Majowski
Vice President
Ocean Technology, Inc.
2835 N. Naomi Street
Burbank, CA 91504

Re: Facility at 2835 North Naomi Street, Burbank, CA
Remedial Action Special Notice Letter for the
San Fernando Valley Area 1/Burbank Operable Unit
Superfund Site in Los Angeles County, California

Dear Mr. Majowski:

The United States Environmental Protection Agency ("EPA") considers Ocean Technology, Inc. to be a potentially responsible party ("PRP") for the costs incurred in connection with contamination at the San Fernando Valley Area 1/Burbank Operable Unit Superfund Site ("Site") in Los Angeles County, California, and hereby requests your participation in upcoming negotiations to conduct certain remedial activities at the Site. Under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9607, responsible parties are liable for the cleanup of the Site, including all costs incurred by the government in responding to releases at the Site.

EPA has conducted an Operable Unit Feasibility Study ("OUFS") at the Site. The OUFS and a Proposed Plan were released for public comment in October 1988 and contained various interim remedial action alternatives. After considering the public comments on the OUFS and Proposed Plan, EPA selected the interim remedial action for the Site in a Record of Decision ("ROD") issued June 1989 and an Explanation of Significant Differences ("ESD") issued November 1990. The selected interim remedial action includes design, construction, and twenty-year operation and maintenance of a groundwater extraction and treatment system at which 12,000 gallons per minute of water will be treated for volatile organic compound contamination. The treated water will be disinfected and delivered to a blending facility where it will be blended to reduce the nitrate levels in the water to the maximum contaminant level for nitrate. The treated and blended water will then be conveyed to the City of Burbank ("City") for distribution in the City's public water supply system. Excess treated water will be reinjected back into the groundwater.

In accordance with Section 122 of CERCLA, 42 U.S.C. § 9622, EPA issued thirty-two special notice letters to PRPs in mid-1989 for the implementation of the selected interim remedial action. Even though EPA extended the deadline for the PRPs to make a proposal to undertake or finance the interim remedial action, EPA received good faith offers from only four of the thirty-two PRPs who received special notice letters.

On March 25, 1992, the Federal District Court for the Central District of California entered a Consent Decree signed by EPA, Lockheed Corporation ("Lockheed"), the City, and Weber Aircraft, Inc. ("Weber"), under which Lockheed and the City agreed to implement, and Lockheed, the City, and Weber agreed to finance, a portion of the interim remedial action specified in the ROD and ESD. On March 26, 1992, EPA issued an Administrative Order to six additional PRPs to design, construct, and provide non-routine maintenance of the blending facility for nitrate, related water transport and receiving facilities, and certain monitoring. The six PRPs who received the Administrative Order are Aeroquip Corporation; Crane Company; Janco Corporation; Sargent Industries, Inc.; the Antonini Family Trust; and Ocean Technology, Inc. Both the Consent Decree and the Administrative Order are limited to the operation and maintenance of the interim remedial action facilities for a period of two years after completion of a phased-in construction schedule. The performance and financing of the remaining eighteen years of operation and maintenance ("long-term O&M"), as well as the recovery of certain costs, is the subject of this special notice letter.

EPA has determined that the use of the special notice procedures set forth in Section 122(e) of CERCLA, 42 U.S.C. § 9622(e), may facilitate a settlement between EPA and the PRPs for this Site. Thus, in accordance with Section 122 of CERCLA, this letter triggers a sixty-day moratorium on certain EPA response activities at the Site. During this sixty-day moratorium period, you and the other PRPs are invited to participate in formal negotiations with EPA. You are also encouraged to voluntarily negotiate a settlement providing for the PRPs to conduct or finance the response activities required at the Site. The sixty-day negotiation moratorium will be extended for an additional sixty days if EPA determines that the PRPs have provided EPA with a good faith offer to conduct or finance the long-term O&M and to reimburse EPA's past and future response costs. Should a 120-day negotiation moratorium take place, negotiations will conclude on September 1, 1994.

A settlement between EPA and the PRPs would be embodied in an amendment to the existing Consent Decree between EPA, Lockheed, the City, and Weber. The amendment is to be executed within the 120-day negotiation period. A copy of the Consent Decree is enclosed to assist you in developing a good faith offer.

If EPA is unable to reach agreement with the PRPs within the 120-day period, EPA will take appropriate measures to ensure the complete implementation of the interim remedial action.

As indicated above, the sixty-day negotiation moratorium triggered by this letter will be extended for sixty days if the PRPs submit a good faith offer to EPA. A good faith offer to conduct or finance the long-term O&M consists of one written proposal by the interested PRPs that demonstrates the PRPs' qualifications and willingness to conduct or finance the long-term O&M and to reimburse EPA's past and future response costs. In order for your proposal to be considered a good faith offer, it must contain the following elements:

- A statement of the your willingness to conduct or finance the long-term O&M that is consistent with the ROD, ESD, and the enclosed Consent Decree and that provides a sufficient basis for further negotiation;
- A demonstration of your technical capability to undertake the long-term O&M; including the identification of the firm(s) that may actually conduct the work or a description of the process by which the firm(s) will be selected;
- A statement of your willingness to reimburse EPA for past costs as well as the costs EPA would incur in overseeing your implementation of the long-term O&M;
- A response to the enclosed Consent Decree in the form of an amendment that will provide all changes that you would seek in order to conduct or finance the long-term O&M and to reimburse EPA's past and future response costs;
- A detailed statement of work or workplan identifying how you intend to proceed with the long-term O&M; and
- The name, address, and telephone number of the party who will represent you in negotiations.

In accordance with CERCLA, EPA has already undertaken certain response actions and has incurred costs in connection with contamination at the Site, including but not limited to costs for the development of a basin-wide, non-operable unit specific remedial investigation. Although the government has already received \$ 3,449,938.97 as reimbursement of certain costs pursuant to the Consent Decree, EPA has incurred and has yet to recover at least \$ 12,392,764 in costs in connection with the contamination at the Site as of April 30, 1992, which include costs not recoverable under the Consent Decree. The exact costs will be provided to you shortly. EPA also anticipates expending additional funds for response activities related to the Site,

which may include a remedial action or oversight of a remedial action. In accordance with Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), demand is hereby made for payment of the above amount plus any and all interest recoverable under Section 107 of CERCLA or under any other provisions of law.

As indicated above, EPA anticipates expending additional funds in connection with the Site. Whether EPA funds the long-term O&M or simply incurs costs by overseeing the parties conducting the response activities, you are potentially liable for all expenditures plus interest.

Interest on past costs incurred shall accrue from the date of this demand for payment or any earlier demand, whatever is earlier; interest on future costs shall accrue from date of expenditure, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a). Interest rates are variable. The rate applicable on any unpaid amounts for any fiscal year is the same as is specified for interest on investments of the Hazardous Substance Superfund which is determined by the Department of the Treasury. EPA is not required by CERCLA to issue a written demand for recovery of prejudgment interest. However, the date a written demand is made may be used by a court in determining the date from which prejudgment interest begins to accrue.

In the event that you file for protection in the Bankruptcy Court, EPA reserves the right to file a Proof of Claim or Application for Reimbursement of Administrative Expenses against the bankrupt's estate.

Remittance must be made payable to the "U.S. EPA Hazardous Substance Superfund" established pursuant to CERCLA in Title 26, Chapter 98 of the Internal Revenue Code, and must reference the San Fernando Valley Area 1/Burbank Operable Unit Superfund Site (Nos. 59 and L6). Please send your remittance to:

U.S. EPA — Region 9
Attention: Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251

If EPA does not receive your response within the sixty-day moratorium period, EPA will conclude that you do not wish to negotiate a resolution of your liabilities in connection with this response action and that you have declined any involvement in performing or financing the response activities. You may be held liable by EPA under Section 107 of CERCLA for the cost of the response activities EPA performed and performs at the Site. If a settlement cannot be reached and the PRPs elect not to conduct or finance the long-term O&M, EPA may choose from among the following options in order to assure full implementation of the ROD and ESD: (i) EPA may issue a unilateral order to the PRPs under Section 106(a) of CERCLA, 42 U.S.C. § 106(a) to

perform the long-term O&M; (ii) EPA may fund the long-term O&M; or (iii) EPA may pursue civil litigation against the PRPs, pursuant to Sections 106(a) and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607.

EPA encourages good faith negotiations between you and the Agency, as well as coordination among the parties potentially responsible for contamination at the Site. EPA encourages PRPs involved at the Site to form a PRP Steering Committee. EPA believes that a PRP Steering Committee is the best vehicle for establishing and maintaining coordinated and constructive dialogue both within the PRP group itself and between PRPs and the Agency.

For your information and to facilitate organization we have enclosed the names and addresses of the PRPs who will be receiving this special notice letter, as well as two fact sheets. In addition, EPA will conduct a meeting on Thursday, June 2, 1994, to answer questions regarding the scope of this special notice letter and the schedule for future negotiations. We will be notifying you or your representative of the meeting time and location.

If you have any technical questions regarding the Site or this letter please contact:

David Seter
Hazardous Waste Management Division, H-6-4
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
(415) 744-2260

Please direct any legal questions to:

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U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, CA 94105
(415) 744-1313

My staff and I look forward to working with you during the coming months.

Sincerely,



David B. Jones
Chief, Remedial Action Branch

Enclosures

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SPECIAL NOTICE LETTER RECIPIENTS
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Burbank Operable Unit
May 4, 1994

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San Fernando Valley Superfund Sites

Region IX, San Francisco

August 1993

Fact Sheet Number 12

STATUS UPDATE FACT SHEET

Federal, state, and local agencies have been investigating and cleaning up groundwater contamination in the San Fernando Valley since the problem was first discovered in 1979. This fact sheet provides an update of recent and future activities conducted under the U.S. Environmental Protection Agency (EPA) Superfund program.

Site Specific Cleanup Activities

EPA has been evaluating and constructing individual cleanup plans to address the most immediate contamination problems. These individual cleanup actions are called operable units (OUs). Operable units have been designated for North Hollywood, Burbank, Glendale North and South, and Pollock areas. The results of studies for each operable unit will be integrated into the long-term basinwide cleanup plan. The following is a description of the status of each of the OUs. Figure 3 on page 5 shows the status of each of the OUs within the Superfund process.

NORTH HOLLYWOOD OPERABLE UNIT

In early 1989, EPA and the State of California, in cooperation with LADWP, completed construction of

a groundwater extraction and treatment facility to inhibit migration of contamination and begin to remove VOCs within a portion of the North Hollywood site. The facility began extracting and treating water on a 24-hour basis in December 1989. The treated water, which meets state and federal drinking water standards, flows through a pipeline to LADWP's North Hollywood Pumping Station for distribution to the public.

EPA paid 90% and the California Department of Health Services (DHS) the remaining 10% of the construction costs of the facility. EPA is now paying 90% and LADWP is paying 10% of the operation and maintenance costs. EPA intends to recover the costs incurred during the investigation, construction, and operation of the North Hollywood operable unit from potentially responsible parties (PRPs) in the North Hollywood area.

BURBANK OPERABLE UNIT

In June 1989, EPA signed the Record of Decision for the Burbank Operable Unit, selecting a cleanup remedy involving the extraction and treatment of 12,000 gallons per

(Continued on page 4)

BACKGROUND

The San Fernando Valley Superfund site is located in the eastern portion of the San Fernando Valley, between the San Gabriel and Santa Monica Mountains. The San Fernando Valley is an important source of drinking water for the Los Angeles metropolitan area, the Cities of Glendale, Burbank, and San Fernando, La Cañada-Flintridge, and the unincorporated area of La Crescenta.

In 1980, after finding organic chemical contamination in the groundwater of the San Gabriel Valley, the California Department of Health Services (DHS) requested all major groundwater users to conduct tests for the presence of certain industrial chemicals in the water they were serving. The results of testing revealed volatile organic compound (VOC) contamination in the groundwater beneath large areas of the San Fernando Valley. The primary contaminants of concern are the solvents trichloroethylene (TCE) and perchloroethylene (PCE), widely used in a variety of industries including metal plating, machinery degreasing, and dry cleaning.

TCE and PCE have been detected in a large number of production wells at levels that are above the Federal Maximum Contaminant Level (MCL), which is 5 parts per billion (ppb) for

(Continued on page 2)

Figure 1. TCE Contamination Plume

BACKGROUND

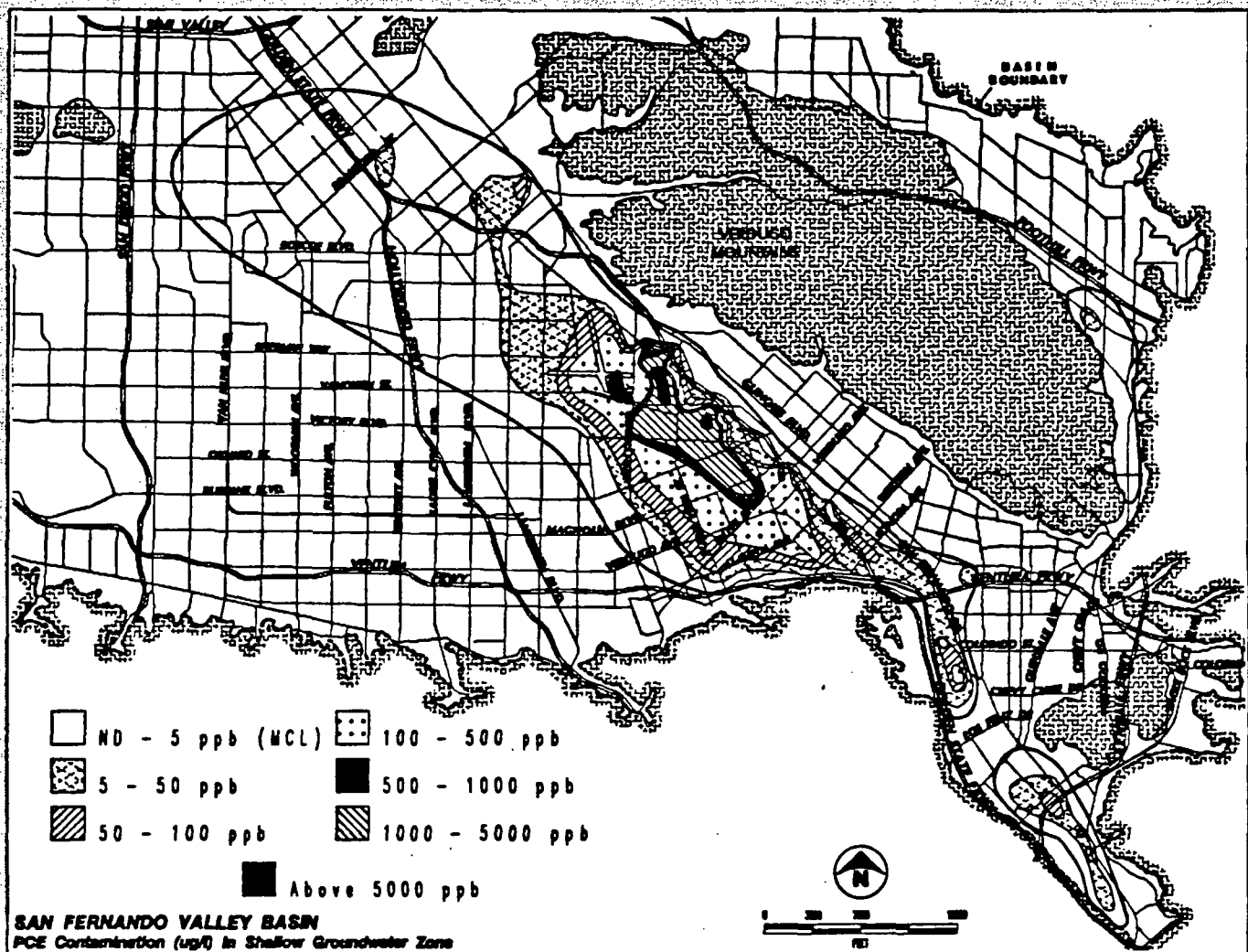


Figure 2. PCE Contamination Plume

were known to be contaminated by VOCs in 1984. In 1986, the four sites were included on the NPL. EPA manages the four sites and adjacent areas where contamination has (or may have) migrated as one large site called the San Fernando Valley Superfund Site. EPA uses the perimeter of the groundwater contamination plume as the boundary for the San Fernando Valley Superfund site. This has allowed the agency to pursue a more comprehensive approach for the investigation and cleanup of the contamination. Figures 1 and 2 show the TCE and PCE groundwater contamination plumes in the San Fernando Valley.

In 1987, EPA and the Los Angeles Department of Water and Power (LADWP) signed a Cooperative Agreement

providing federal funds to perform a remedial investigation (RI) of groundwater contamination in the San Fernando Valley. EPA is coordinating the large-scale effort for subsequent groundwater monitoring and the basinwide groundwater Feasibility Study (FS).

EPA has divided the San Fernando Valley Superfund Site into five operable units (OUs) to accelerate the investigation and cleanup of the study area. Each OU represents a discrete, interim containment remedy currently in progress throughout the eastern portion of the San Fernando Valley. EPA has signed Record of Decision (ROD) documents for four OUs in the San Fernando Valley: North Hollywood OU (1987), Burbank OU (1989), and Glendale North and South OUs (1993). The North Hollywood OU Interim Remedy is

BACKGROUND

(Continued from page 3)

currently operating. The Burbank OU is in the remedial design phase. The RODs for the Glendale North and South OUs were recently signed and these OUs will be entering the remedial design phase in the near future. A remedial investigation to determine the need for a possible fifth OU in the Pollock area is currently underway. All remedial actions established by EPA in the Records of Decision issued to date are interim measures but are intended to be consistent with the overall long-term remediation of the San Fernando Valley. EPA has not yet selected a final remedy for the entire San Fernando Valley.

Local water suppliers and state agencies are ensuring that drinking water meets all state and federal standards. Due to the use of alternative water supplies and regular testing by local water suppliers, public drinking water in the San Fernando Valley is safe to drink.

Site Specific Cleanup Activities

(Continued from page 1)

minute (gpm) of VOC-contaminated groundwater. The treated water will meet all MCLs and secondary drinking water standards, except for nitrate. The treated water will be disinfected and then blended with water which does not contain nitrate in excess of the MCL to reduce nitrate levels and meet the MCL. The treated water will be de-

livered to the City of Burbank for distribution. Excess treated water will be reinjected back into the groundwater.

A Consent Decree became effective on March 25, 1992 between EPA, Lockheed Corporation, Weber Aircraft and the City of Burbank to design and construct the extraction and disinfection facilities. An Administrative Order was issued to six additional responsible parties to design and construct the blending facilities.

The extraction and treatment facilities will be designed and constructed in three phases. Phase I will extract and treat 6,000 gpm and is estimated to be operational in April 1994. Phase 2 will extract and treat an additional 3,000 gpm and is estimate to be operational in April 1996, and Phase 3 will treat another 3,000 gpm and will be operational by April 1998. The Consent Decree and Administrative Order also include operation and maintenance of the facilities for two years after Phase 3 is operational.

EPA is still conducting source investigations and developing technical cases and intends to begin negotiations with PRPs for the long-term operation and maintenance of these treatment facilities (for an additional 18 years) in 1994.

GLENDALE OPERABLE UNIT

In late 1989, during the basinwide groundwater remedial investigation (RI), EPA found elevated concentrations of VOCs in the groundwater of the Glendale area of the San Fernando Valley. In the Spring of 1990, EPA commenced an RI of the Glendale area and by early 1991

when the RI was complete, it was clear that there were two distinct plumes of VOC contamination in the Glendale area. These two plumes were referred to as the Glendale North Plume and the Glendale South Plume. EPA then determined that these two VOC plumes should be addressed as distinct operable unit remedies and thus separate feasibility studies were conducted to evaluate cleanup alternatives for each contamination plume.

A final remedial investigation report for both Glendale North and South OUs was completed in January 1992. The Glendale North OU Feasibility Study was completed in April 1992 and a Proposed Plan was presented to the public in June 1992. For Glendale South OU, the Feasibility Study was completed in August 1992 and a Proposed Plan was released in September 1992. Public meeting and comment periods were held for both OUs.

On June 18, 1993, EPA signed both the Glendale North and South OU Records of Decision. These RODs describe EPA's selected remedies for the groundwater contamination in the Glendale Study Area. As a result of comments by the City of Glendale on the Proposed Plans for the two OUs, indicating that the City had sufficient water credits to accept the water from both OUs, EPA determined that the treatment plants for the two OUs would be combined. This determination is documented in both RODs.

The selected remedies consist of groundwater extraction and treatment for the shallow aquifer system.

(Continued on page 6)

OU or Study Area	Site Discovery	NPL Ranking and Listing	Remedial Investigation (RI)	Feasibility Study (FS)	Public Comment Period	Record of Decision (ROD)	Remedial Design	Remedial Action
North Hollywood OU	In 1980, contaminated groundwater was discovered by San Fernando Valley Water Purveyors through testing mandated by the State of California Department of Health Services.	In 1984, four sites within the San Fernando groundwater basin were proposed for inclusion on the National Priorities List (NPL), because of contamination in municipal wellfields. In June 1986, the four sites were added to the NPL.	LADWP investigated contamination in the North Hollywood OU. LADWP recommended that a groundwater extraction and treatment system be constructed.			EPA signed the Record of Decision in September 1987.	Construction of the extraction and treatment facility was completed in early 1989.	The facility began extracting and treating water on a 24-hour basis in December 1989.
Burbank OU			EPA issued this RI report as part of the October 1988 OU Feasibility Study.	EPA released the FS for the Burbank OU in October 1988. The cleanup remedy involved extracting and treating the contaminated groundwater.	EPA had a public comment period from October to December 1988 for its Proposed Plan for the Burbank OU.	EPA signed the ROD in June 1989. An Explanation of Significant Differences was issued in November 1990. Twelve-thousand gpm of contaminated water will be extracted and treated.	EPA signed a Consent Decree with three responsible parties in March 1991 to design and construct the extraction and disinfection facility. The consent decree became effective in March 1992.	The extraction and treatment facility is expected to begin operation by April 1994.
Glendale North OU			EPA issued the RI report for the Glendale Study Area in January 1992.	EPA issued this Feasibility Study in April 1992. The selected remedy involves treating groundwater in the shallow aquifer in the Glendale North OU.	A public comment period on EPA's preferred alternative was held from July to September 1992. A public hearing was held on July 23, 1992.	EPA signed Records of Decision for both Glendale North and South OUs on June 18, 1993. The treatment facilities for both OUs will be combined at a single location in the Glendale North OU area. Extraction rates will be 3,000 gpm for Glendale North and 2,000 for Glendale South.	EPA intends to conduct negotiations with potentially responsible parties to pay for the design, construction, and operation of the selected remedy.	
Glendale South OU				EPA issued this Feasibility Study in August 1992. The selected remedy involves groundwater extraction and treatment.	EPA held a public comment period from October 1992 to January 1993 on the preferred alternative for this OU. A public hearing was held on October 21, 1992.			
Pollock Study Area			EPA is currently conducting a site assessment of the Pollock Study Area to determine if RI/FS activities are appropriate for this study area.					
Basinwide Study Area			EPA issued the Basinwide Groundwater RI in December 1992.	EPA is currently conducting the Basinwide Groundwater and Vadose Zone Feasibility Studies.				



Completed



Current or To Be Done

Figure 3. Where the OUs Are Within the Superfund Process

Site Specific Cleanup Activities

(Continued from page 4)

The treatment facilities for both OUs will be combined at a single location in the Glendale North OU area. Combining the treatment facilities will save resources, accelerate the start of remedial action, and allow EPA to conduct one negotiation with a combined pool of PRPs.

Under the selected remedy, groundwater will be extracted at a rate of 3,000 gpm for Glendale North and 2,000 gpm for Glendale South for 12 years. New extraction wells will be installed at locations that most effectively inhibit the migration of the contamination plumes. The extracted water will be treated for VOCs using either air stripping or liquid-phase granular activated carbon (GAC). If air stripping is chosen, then vapor-phase GAC adsorption will be used to control air emissions.

The extracted water will be treated to meet all MCLs and secondary drinking water standards, with the exception of nitrate. The MCL for nitrate will be met by blending with water which does not contain nitrate in excess of the MCL. The treated and blended water will then be conveyed to the City of Glendale for distribution through its public water supply system. If Glendale does not accept all or part of the treated water, the water will be offered to another municipality and/or reinjected into the basin or recharged at the Headworks Spreading Ground. EPA anticipates the two OUs to be operational by 1996.

EPA is currently in the process of negotiating with PRPs to pay for the design, construction, and operation of the selected remedy, EPA's past costs associated with the RI/FS and EPA's future oversight costs.

POLLOCK STUDY AREA

The Pollock Study Area is located at the southern portion of the San Fernando Valley Basin in the vicinity of the Pollock Wellfield. EPA recently initiated a site assessment of the Pollock area because the basinwide VOC plumes extend into this area of the basin and concentrations of TCE are in the range of 50-100 ppb in the shallow groundwater. This is of particular concern because another groundwater basin, the Central Basin, is located directly downgradient of the Pollock Wellfield area and further downgradient migration could impact that basin.

EPA is currently conducting a site assessment of the Pollock Study Area based on existing data. The site assessment is expected to be completed in the Fall of 1993. Based upon the results of the Site Assessment, EPA will determine what additional RI/FS activities would be appropriate for the Pollock Study Area and whether or not an Operable Unit will be initiated. If an OU is initiated, the primary objective of such an interim remedy would likely be to contain the southern portion of the basinwide contamination plume and prevent it from migrating into and contaminating the Central Basin.

In addition, LADWP has recently announced its intention to initiate a

HOW

EPA uses a variety of resources to build enforcement cases, including facility specific information, groundwater and vadose zone modeling results, and results from investigations by state agencies. EPA also requests information from industrial facilities about historic property use, industrial processes, and hazardous substance handling. The goal of the enforcement program is to compel responsible parties to design, construct, and operate treatment facilities and reimburse EPA for prior and any future expenditures at the site.

The enforcement process involves several components, all of which may be underway concurrently. Figure 4 is a schematic of the enforcement process.

■ INFORMATION GATHERING

Based on information obtained from the Regional Water Quality Control Board and Cal-EPA/DTSC site investigations, as well as information request letters sent by EPA to individuals and/or companies regarding the use and handling of hazardous substances at the facility, EPA gathers and compiles information on facilities throughout the San Fernando Valley.

■ INFORMATION EVALUATION

EPA evaluates the information gathered to determine which parties may be held responsible for the groundwater contamination and the cost of groundwater cleanup remedies. EPA notifies parties that they are investigating activities at their site through General Notice letters. A General Notice letter notifies a party that it may be potentially liable for the investigation and cleanup of contamination. Potential sources include businesses, industries, or agencies that generate, transport, use, treat, store, or dispose of hazardous substances.

(Continued on page 8)

DES EPA'S ENFORCEMENT PROCESS WORK?

■ LIABILITY IDENTIFICATION AND NOTIFICATION

After reviewing the information obtained from site investigations at the facility and from the information requests, EPA determines which parties should receive Special Notice letters. Parties that receive Special Notice letters are referred to as potentially responsible parties (PRPs). Special Notice letters are sent to notify the parties of their liability for the groundwater contamination. Unlike General Notice letters, which indicate that parties may be potentially liable, Special Notice letters are sent to parties that EPA has determined are potentially liable. These letters initiate a negotiation process and require a "good faith offer" by the company within 60 days of receiving the letter. In a cost recovery case, EPA sends Demand for Payment letters rather than Special Notice letters.

■ BEGIN NEGOTIATIONS

EPA then attempts to negotiate an agreement with the parties to implement the remedy and/or pay past and /or future costs.

■ IF NEGOTIATIONS ARE UNSUCCESSFUL

If a settlement is not reached, EPA has the authority to issue a Unilateral Administrative Order or file a lawsuit against the responsible party.

What Enforcement Activities Has EPA Conducted?

Enforcement is a crucial component of Superfund activities and EPA has been actively working to get responsible parties to contribute to remedial actions in the San Fernando Valley. In September 1989, EPA signed a cooperative agreement with the State Water Resources Control Board providing funds for the Regional Water Quality Control Board, Los Angeles Region (Regional

Board) to oversee soil and groundwater investigations at individual facilities in the San Fernando Valley. The cooperative agreement has been renewed annually since 1989. If Regional Board investigations confirm soil or groundwater contamination, the facility is then referred to EPA. In addition, the Regional Board uses State funds to require and oversee individual facility cleanups. Using its enforcement authority under Superfund, EPA makes determinations regarding individuals and companies who are responsible for the groundwater contamination in the San Fernando Valley. Most of the source-specific investigation and source elimination will be conducted by the facilities (including PRPs) under the oversight of the Regional Board.

In 1989-90, EPA sent Special Notice letters to 32 parties for the Burbank OU. EPA settled (through a Consent Decree) with three parties and issued an Administrative Order to six of the remaining parties for partial implementation of the remedy. EPA intends to issue Special Notice letters in 1994 for negotiations of the remaining operation and maintenance of the remedy. In 1992 and 1993, EPA sent General Notice letters to 46 PRPs for 27 facilities in the Glendale North area and 19 PRPs for 12 facilities in the Glendale South area. EPA intends to pursue an Administrative Order on Consent for Remedial Design for a combined Glendale North and South project.

In July 1993, EPA sent 16 Demand for Payment letters to PRPs in the North Hollywood area, for cost recovery action. EPA and the Department of Justice held a meeting with the PRPs on July 22, 1993 to discuss the strategy for negotiations of past and future costs related to the North Hollywood OU and Basinwide activities.

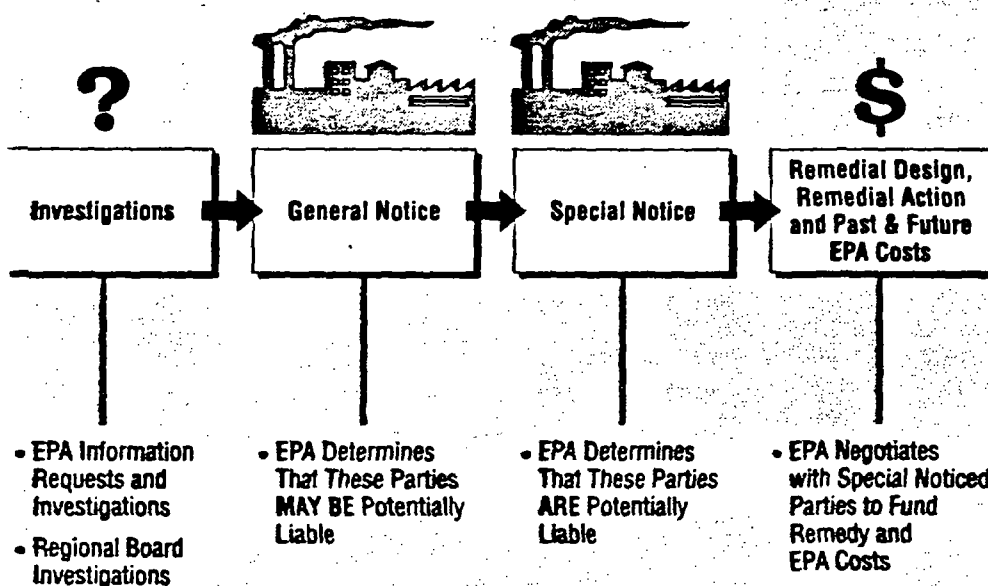


Figure 4. EPA's Enforcement Process

Site Specific Cleanup Activities

(Continued from page 6)

pump and treat project in the Pollock Wellfield. Under their proposal, a total of 3,000 gpm will be extracted from two Pollock production wells. The water will be treated and conveyed to LADWP's public water supply. While the primary objectives of this project are to protect LADWP's water rights and to supply clean drinking water to its public water distribution system, EPA will be working with LADWP to determine and evaluate the potential cleanup benefits associated with this project.

VERDUGO STUDY AREA

The Verdugo NPL site includes the contaminated groundwater in and around several wellfields located in the Verdugo Basin. The investigation of the nature and extent of contamination in the Verdugo Basin was included in the Basinwide Groundwater RI. In recent years, only the VOC perchloroethylene (PCE) has been consistently detected at concentrations at or slightly above its MCL of 5 ppb, and in only a small number of the total wells sampled. However, nitrate contamination has been found to be extensive throughout the Verdugo Basin.

EPA recently completed a site assessment for the Verdugo Basin. The site assessment, entitled *Site Assessment and Monitoring Plan for the Verdugo Basin* (April 1993), defines the hydrogeologic framework of the Verdugo Basin and characterizes the

current and historic patterns of groundwater contamination. This site assessment is available for review at the five information repositories listed on page 11.

Due to the repeated detection of only very low levels of PCE in the Verdugo Basin, EPA has determined that remedial action in that Basin is not necessary at this time. However, EPA continues to sample its groundwater monitoring wells in the Verdugo Basin on a quarterly basis to monitor the quality of the groundwater and to observe any changes in the extent of contamination.

Basinwide Activities

EPA is preparing a Basinwide Feasibility Study (FS) to analyze contamination cleanup methods that will minimize public health risks and environmental impacts. The results of the Basinwide FS will unite basinwide technical needs, the operable units, and agency roles into a statement of long-range cleanup goals and methods. The Basinwide FS includes both groundwater and vadose zone (the zone of soil above the water table) studies.

GROUNDWATER INVESTIGATION

A complete investigation of groundwater contamination in the San Fernando Valley was conducted through a Basinwide Groundwater Remedial Investigation (RI). The Basinwide RI Report was completed in December 1992 and describes the results of more than five years of investigation of groundwater contamination in the San Fernando and

Verdugo Basins through 1991. This investigation is one of the largest projects of its kind in size and complexity in the United States. This report has provided EPA a better understanding of the nature and extent of VOC contamination in the groundwater of the San Fernando Valley. The Basinwide Groundwater RI was completed by LADWP with funding and technical oversight provided by EPA.

As part of the Basinwide Groundwater RI, EPA installed 87 groundwater wells. Forty-one of these wells are sampled quarterly to monitor the nature and extent of the groundwater contamination in the San Fernando Valley. All 87 wells are sampled annually. EPA is using the results of the Basinwide Groundwater RI to conduct a Basinwide Groundwater Feasibility Study to address VOC contamination in the groundwater of the eastern portion of the San Fernando Valley.

EPA has completed some initial activities related to the Basinwide Groundwater Feasibility Study, including technical memoranda on water rights and water management in the San Fernando Valley and recalibration and verification of the basinwide groundwater flow model incorporating the most recent data. The updated version of the model was completed in June 1993. EPA is now reviewing and evaluating various groundwater remediation options for the basin including regional pump and treat, well-head treatment, innovative technologies and no-further-action alternatives.

(Continued on page 10)

WHO'S INVOLVED?

The San Fernando Superfund project is large and complex, requiring many agencies to work together. EPA is coordinating efforts to address groundwater contamination in the San Fernando Valley Basin with water supply management activities. The agencies include the Los Angeles Department of Water and Power (LADWP), the Cities of Burbank and Glendale, the Crescenta Valley County Water District, the ULARA Watermaster, the Metropolitan Water District (MWD), the California Environmental Protection Agency (Cal-EPA), the Regional Board, and the State Water Resources Control Board. Representatives of these agencies meet quarterly at Management Committee Meetings to discuss issues pertaining to the San Fernando Valley Basin. Technical issues, related to RI/FS efforts, are also addressed at the quarterly meetings of the Interagency Coordinating Committee, a committee founded to implement the San Fernando Valley Basin Groundwater Quality Management Plan. The roles of some of these agencies are briefly described below.

EPA The U.S. Environmental Protection Agency has overall responsibility for cleanup and enforcement efforts at the San Fernando Valley Superfund Site. EPA is responsible for groundwater and vadose zone feasibility studies, community relations activities, and enforcement efforts. EPA is also responsible for the quarterly water quality monitoring program.

Cal-EPA The California EPA (formerly called the Department of Health Services) is the state agency responsible for protecting the health and welfare of California residents. It requires regular testing of drinking water and has established state standards for more than 50 potential contaminants. Through its Department of Toxic Substances Control, Cal-EPA also enforces state hazardous waste cleanup requirements and oversees potential source sites. Cal-EPA also reviews EPA documents and provides input to ensure compliance with state regulations. Cal-EPA is the coordinating agency for the state and is also involved in cleanup of sites around and within the San Fernando Valley.

Regional Board The Regional Water Quality Control Board, Los Angeles Region, is responsible for the protection of surface and groundwater for the State of California. The Regional Board investigates facilities which use, store, or handle chemicals. When contamination is found, the Regional Board requires and oversees site clean-up. Through a cooperative agreement with EPA, the Regional Board has been provided funds to investigate potential sources of groundwater contamination in the San Fernando Valley.

LADWP The Los Angeles Department of Water and Power has overall responsibility for water supply in the City of Los Angeles. It is required to provide water to its customers which meet state and federal drinking water standards. LADWP was responsible for a number of tasks under a cooperative agreement with EPA originally signed in 1987. LADWP completed the Phase 1 Basinwide Groundwater RI (December 1992) and feasibility studies for the North Hollywood OU (1986), Burbank OU (1989), Glendale North OU (April 1992) and Glendale South OU (August 1992).

Now that the basinwide groundwater RI report is final, LADWP's direct role in the overall project has decreased significantly. LADWP's continuing involvement includes preparation of cost documentation to support EPA enforcement/cost recovery actions, and coordination and consultation with EPA about the Pollock Sudy Area, and basinwide water management issues pertinent to remedial actions. In addition, LADWP continues to operate and maintain the North Hollywood OU treatment facility.

Burbank and Glendale The Cities of Burbank and Glendale each provide drinking water to their residents through local municipal utilities. As water providers, each city must test water regularly and ensure that water supplies meet federal and state standards. Both cities have been closely involved in the Superfund studies. The City of Burbank is a signatory to the Consent Decree for the Burbank OU and it is likely that the City of Glendale will be a signatory to an Administrative Order on Consent for the Glendale OUs.

ULARA Watermaster The Upper Los Angeles River Area (ULARA) Watermaster is appointed by the Los Angeles Superior Court and oversees and documents all actions that affect groundwater supply in the basin such as annual rainfall, import and export of water to other areas, and pumping of groundwater for both water supply and remediation purposes. The Watermaster is working with EPA and the Regional Board to address groundwater management issues in the San Fernando Valley.

Site Specific Cleanup Activities

(Continued from page 8)

EPA's interim actions to remove contaminants and inhibit migration from the most contaminated areas in North Hollywood, Burbank, Glendale North, and Glendale South will be major components of the basinwide cleanup plan. The Basinwide Groundwater FS will examine the need for additional actions to address the contaminants that have already reached the groundwater. EPA has been working with the San Fernando Valley water purveyors and the Upper Los Angeles River Area (ULARA) Watermaster to summarize past and future groundwater management in the San Fernando Valley.

SOILS INVESTIGATION

During 1993, EPA also initiated work on a vadose zone FS to examine ways to protect the groundwater from contaminants in the soil that could reach the groundwater in the future. As part of this FS, EPA will review and evaluate options for cleanup of VOC contamination in the vadose zone of the San Fernando Valley. EPA intends to develop a methodology for use at sites with known VOC soil contamination.

Public Involvement

EPA is committed to informing community members and other interested parties about the federal process for addressing contamination in the San Fernando Valley.

EPA encourages open communication between the public, EPA, and state and local agencies.

The Community Relations Plan for the San Fernando Valley Superfund sites was updated in August 1993. The plan was revised to reflect community relations activities conducted since its previous revision in 1990.

EPA's Proposed Plan for the Glendale North OU was prepared in the form of a fact sheet and was distributed in July 1992 to approximately 1800 individuals on EPA's mailing list for the San Fernando Valley Superfund Sites. A public meeting was held in the City of Glendale on July 23, 1992 to discuss EPA's preferred alternative for groundwater cleanup and other alternatives. EPA gave a brief presentation regarding the Proposed Plan, answered questions, and accepted comments from members of the public. A 60-day public comment period was held between July and September 1992.

In September 1992, EPA presented its Proposed Plan for addressing the south plume of groundwater contamination in the Glendale Study Area. A public meeting was conducted by EPA on October 21, 1992 to present the proposed cleanup plan for the Glendale South OU. Comments from the public were accepted through January 19, 1993.

EPA has distributed several other fact sheets, including one in March 1993 presenting results and findings from the Basinwide Remedial Investigation, and a June 1993 fact sheet announcing the selection of a cleanup remedy for the Glendale North and South Operable Units.

All of the documentation and material produced regarding the above activities is available at the five information repositories listed on page 11. In May 1992, an audit of these repositories was conducted to determine the availability and condition of the documents. Documents that were missing or in poor condition were replaced with new copies and the information repositories are now up-to-date. The administrative records for each of the OUs is at all five information repositories, although some of the administrative records are only on microfilm and some are only in hard-copy format. To view the microfilm, please see the reference desk librarian at the repositories.

The Community Work Group (CWG) that had met quarterly from March 1987 through December 1991 was discontinued in early 1992, due to lack of attendance. EPA and LADWP participated in the meetings to discuss technical issues and management strategies with interested San Fernando Valley community residents, elected officials, agency representatives, and environmental and business leaders. The group was designed to review Superfund work and provide input and feedback to EPA and other agencies involved in the San Fernando Valley cleanup. EPA also used the group as a means of information exchange with key representatives of the San Fernando Valley community.

EPA has been involved in a variety of other community relations activities, including briefings to community groups such as the League of Women Voters and area Rotary Clubs.

SAN FERNANDO VALLEY INFORMATION REPOSITORIES

EPA maintains information repositories containing fact sheets, technical documents, the Remedial Investigation/Feasibility Study, the Community Relations Plan, the ROD, and other reference materials. If documents are not available, contact Fraser Felter, Community Relations Coordinator, at (415) 744-2181.

City of Burbank Public Library
110 North Glenoaks Boulevard
Burbank, CA 91502
(818) 953-9741

Contact: Andrea Anzalone
Hours: M-Th 9:30 am-9:00 pm
F 9:30 am-6:00 pm
Sat 10:00 am-6:00 pm

City of Glendale Public Library
222 East Harvard Street
Glendale, CA 91205
(818) 548-2021

Contact: Lois Brown
Hours: M-Th 10:00 am-8:55 pm
F-Sat 10:00 am-5:55 pm

California State University Northridge Library
18111 Nordhoff Street
Northridge, CA 91330
(818) 885-2285

Contact: Mary Finley
Hours: M-Th 8:00 am-10:00 pm
F 8:00 am-5:00 pm
Sat 9:00 am-5:00 pm

Los Angeles Department of Water and Power (LADWP) Library

111 North Hope Street, Room 518
Los Angeles, CA 90012
(213) 481-4612

Contact: Joyce Purcell
Hours: M-F 7:30 am-5:30 pm

The University Research Library/U.C.L.A.

Public Affairs Service
405 Hilgard Avenue
Los Angeles, CA 90024
(310) 825-3135

Contact: Barbara Silvernail
Hours: M-F 10:00 am-7:00 pm
Sat 1:00 pm-5:00 pm

For further information about the Basinwide Investigation and cleanup, contact:

Colette Kostelec/Project Manager
U.S. EPA, Region IX
75 Hawthorne Street (H-6-4)
San Francisco, CA 94105
(415) 744-2253, FAX: (415) 744-2180

Fraser Felter/Community Relations Coordinator
U.S. EPA, Region IX
75 Hawthorne Street (H-1-1)
San Francisco, CA 94105
(415) 744-2181 or (800) 231-3075

MAILING LIST COUPON

If you did not receive this fact sheet by mail and would like to be included on the mailing list for the San Fernando Valley Superfund project, please fill out this coupon and return it to the EPA Office of Community Relations.

Name: _____

Address: _____

Telephone: _____

Affiliation (if any): _____

Return to: Office of Community Relations, U.S. EPA, 75 Hawthorne Street (H-1-1), San Francisco, CA 94105

WHAT IS SUPERFUND?

Superfund is the commonly-used name for the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), a federal law enacted in 1980 and amended in 1986. CERCLA enables EPA to respond to hazardous sites that threaten public health and the environment where owners or operators are either unwilling or unable to address the contamination themselves.

Two major steps in the Superfund process are to conduct an in-depth investigation of a site (called a Remedial Investigation) and evaluate possible cleanup alternatives (the Feasibility Study). During the Remedial Investigation, information is gathered to determine the general nature, extent, and sources of contamination at a site. Using the alternatives developed during the Feasibility Study, EPA selects a preferred cleanup alternative considering the

following criteria: (1) overall protection of human health and the environment; (2) compliance with state and federal laws; (3) long-term effectiveness; (4) reduction of potency of the contamination (toxicity), ability of the contaminants to move through the environment (mobility), and the amount of contamination (volume); (5) cost; (6) short-term effectiveness; (7) how easily an alternative can be applied (implementability); (8) state acceptance; and (9) community acceptance.

Once the final cleanup plan has been selected, EPA formalizes this decision by signing a Record of Decision (ROD). The ROD also contains a Responsiveness Summary, EPA's response to public comments. Design and actual cleanup activities (Remedial Design and Remedial Action) can then proceed.

United States Environmental Protection Agency
Region 9
75 Hawthorne Street (H-1-1)
San Francisco, CA 94105
Attn: Fraser Felter

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INSIDE: STATUS OF ACTIVITIES AT THE SAN FERNANDO VALLEY SUPERFUND SITES



EPA

U.S. EPA, Lockheed Corporation, Weber Aircraft and City of Burbank Sign Agreement to Conduct Cleanup Activities

United States Environmental Protection Agency, Region IX, San Francisco

Fact Sheet No. 7

September 1991

The U.S. Environmental Protection Agency (EPA), the City of Burbank, the Lockheed Corporation (Lockheed) and Weber Aircraft, Inc. (Weber Aircraft) have signed an agreement under which Lockheed will design and construct a groundwater treatment system to clean up contamination in the Burbank area. EPA estimates the current value of the work at \$60 million. Weber Aircraft will contribute \$3.75 million to be used toward the design and construction costs. The treated water will be blended with water from existing water supplies of the Metropolitan Water District of Southern California and distributed

by the City of Burbank through its public water supply system. Any excess water will be reinjected into the groundwater aquifer.*

The treatment facility constructed by Lockheed will remove the volatile organic compounds (VOCs) that have contaminated the water. However, the water may also contain nitrates which will not be removed by the treatment plant. The nitrate levels will be reduced to below drinking water standards by blending the treated water with water which does not contain high levels of nitrates.

OPPORTUNITY FOR PUBLIC REVIEW AND COMMENT

The agreement between Lockheed, Weber Aircraft, EPA, and the City of Burbank is contained in a legally binding document known as a Consent Decree. This document is available for public review at the EPA Superfund Records Center in San Francisco. EPA has placed a copy of the Consent Decree at the information repositories listed on the last page of this fact sheet. If the copy is not available, contact Fraser Feller at 415/744-2181 to receive a copy. If you wish to comment on the decree, you must submit comments in writing, to:

Barry M. Hartman
Assistant Attorney General
Land and Natural Resources Division
Department of Justice
Tenth and Pennsylvania Avenues, N.W.
Washington, D.C. 20530
Attn: Burbank Consent Decree

Comments will be received by the Department of Justice up to and including October 5, 1991. Comments should refer specifically to the United States versus the City of Burbank, the Lockheed Corporation and Weber Aircraft, Inc., D.J. Reference No. 90-11-2-442. After the comment period closes, the federal government will prepare responses to all significant public comments. The Department of Justice will consider all of the comments and decide whether the settlement is still appropriate and adequate in light of the comments. If the Department of Justice still thinks that the Decree should be made effective, it will request the Court to enter the Decree. A judge assigned to oversee this government action will review the comments and responses and determine if the agreement between Lockheed, Weber Aircraft, EPA, and the City of Burbank is in the public interest and should therefore be made effective. The final settlement and responses to comments will be available for public review.

SITE BACKGROUND

The San Fernando Valley is located between the San Gabriel Mountains and the Santa Monica Mountains. Several groundwater basins in the valley are collectively referred to as the San Fernando Valley Basin. The basin is an important source of drinking water for the Los Angeles metropolitan area, La Crescenta, and the cities of Glendale, Burbank, and San Fernando (Figure 1).

In 1986, EPA placed four sites in the San Fernando Valley Basin on the Superfund National Priorities List (NPL). The NPL is a list of the most seriously contaminated hazardous waste sites eligible for federal cleanup funds under the Superfund program. As shown on Figure 1, the four sites are North Hollywood, Crystal Springs, Verdugo, and Pollock. The sites are located in the cities of Los Angeles, Burbank, and Glendale. Although specific groundwater cleanup actions are taking place at each site, EPA manages the entire San Fernando Valley Basin cleanup as one large site referred to as the San Fernando Valley Study Area.

WORK TO BE PERFORMED

Based upon a feasibility study of alternative methods to clean up the site, public comments on the recommended plan, and other Burbank Study Area information, EPA selected the interim cleanup methods for the site in a Record of Decision (ROD) issued May 1989 and an Explanation of Significant Differences (ESD) issued November 1990. The selected interim groundwater cleanup method involves pumping groundwater from wells installed for cleanup purposes and then forcing air or steam into the water (using air or steam strippers) to remove contamination. The treated water will then be distributed by the City of Burbank through its public water supply system, or reinjected into the aquifer.

In the Consent Decree, Lockheed has agreed to design and construct a plant which can treat 12,000 gallons per minute (gpm) of groundwater. The plant will be constructed in three phases. The first phase will treat 6,000

SAN FERNANDO VALLEY GROUNDWATER BASIN SUPERFUND SITE

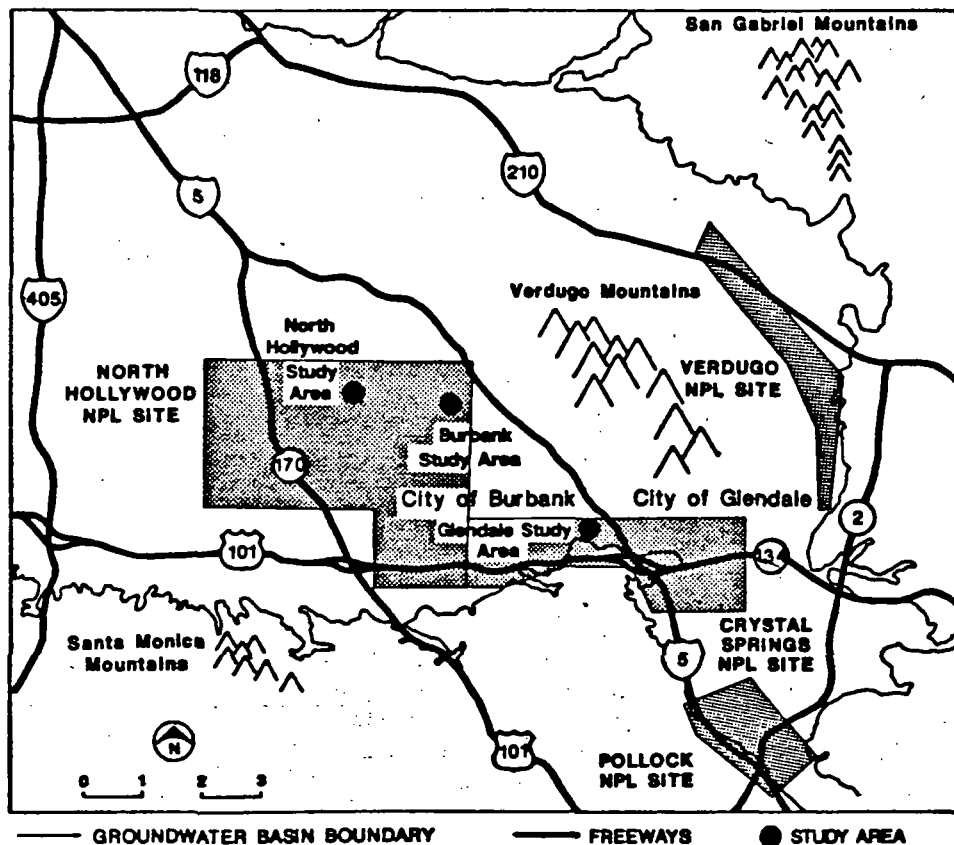


Figure 1:

gpm; the second, 9,000 gpm; and the final, 12,000 gpm. Lockheed will pay for the operation and maintenance costs for two years after the completion of Phase 3.

Burbank will design and construct facilities to disinfect and convey the treated water to a blending facility. Lockheed will pay for the costs of performing this work up to \$200,000.

Burbank will accept all the treated water it can use. The remaining water will be reinjected into the aquifer by Lockheed.

POTENTIALLY RESPONSIBLE PARTIES

As part of its investigation of the Burbank Study Area, EPA identified parties (known as potentially responsible parties or PRPs) it believes may be legally responsible for the cleanup of contamination at the site. This fact sheet explains the work to be done under the Consent Decree signed by EPA and three PRPs, Lockheed, Weber Aircraft, and the City of Burbank.

ADDITIONAL TERMS OF THE AGREEMENT

Additional terms of the Consent Decree require Lockheed to:

- Control air emissions from air or steam strippers to comply with the South Coast Air Quality Management District and EPA standards.
- Pay EPA's future costs connected to the Burbank site during the time the Consent Decree is in effect and reimburse EPA for its past costs at the Burbank site in the amount of \$1,958,930.

In addition, Lockheed, Weber Aircraft, and the City of Burbank will become liable for stipulated penalties if they fail to comply with the terms of the agreement.

WHAT IS SUPERFUND AND HOW IS IT FUNDED?

In 1980, Congress passed a law called the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly called the Superfund. The Superfund Amendments and Reauthorization Act (SARA) was passed by Congress in 1986 to update and improve the Superfund law. The law authorizes the federal government to respond directly to releases or threatened releases of hazardous substances that may endanger public health, welfare, or the environment. Legal actions can be taken to force parties responsible for causing the contamination to clean up those sites or reimburse the Superfund for the costs of cleanup. If those responsible for site contamination cannot be found or are unwilling or unable to clean up a site, EPA can use monies from Superfund to clean up a site. The Superfund is actually the trust fund that

finances these cleanup actions. CERCLA established a \$1.6 billion fund made up of taxes on crude oil and commercial chemicals. When the Superfund was reauthorized by Congress in 1986, the fund was increased to \$8.6 billion. These monies are made available to the Superfund directly from excise taxes on petroleum and feedstock chemicals, a tax on certain imported chemical derivatives, an environmental tax on corporations, appropriations made by Congress from general tax revenues, and any monies recovered or collected from parties responsible for site contamination. Reauthorization of the Superfund was incorporated into the 1991 budget legislation recently passed by Congress and signed by the President. This provided an additional \$5.1 billion and authority to continue funding under the existing program through September 30, 1994.

WORK REQUIRED BY THE ROD NOT INCLUDED IN THIS SETTLEMENT

The following are items which are necessary for the completion of the remedy described in the Burbank ROD, but which are not part of this settlement. EPA intends to have these tasks performed through future enforcement actions or judicial settlements:

- The design and construction of a facility to blend the treated water with water received from the Metropolitan Water District of Southern California
- The performance of operation and maintenance of the treatment facility beyond the two years covered in the agreement

MINOR MODIFICATIONS TO THE REMEDY

The Consent Decree also contains some nonsignificant modifications to the remedy selected by the ROD and Explanation of Significant Differences (ESD). These modifications are so minor that they do not need to be described in an ESD. The modifications all relate to the conditions under which Lockheed may discharge extracted water and the hazardous waste and air regulations which must be followed. For specific details, see Consent Decree, Section VII, Subpart F.

Glossary

AIR/STEAM STRIPPING: A treatment method that removes volatile organic compounds from contaminated water by forcing air or steam through the water. The volatile chemicals evaporate when exposed to the air.

AQUIFER: A particular zone or layer of rock or soil below the earth's surface through which groundwater moves in sufficient quantity to serve as a source of water.

CONTAMINANT PLUME: A three-dimensional zone within the groundwater aquifer containing contaminants that generally move in the direction of, and with, groundwater flow.

ESD (Explanation of Significant Differences): A document which describes significant but not fundamental changes which have been made to a remedial action plan described in the ROD. Fundamental changes are described in a ROD amendment.

FEASIBILITY STUDY: An analysis of cleanup or remedial alternatives to evaluate their effectiveness and to enable EPA to identify a preferred alternative.

GAC (Granular Activated Carbon): An adsorptive material that attracts and holds contaminants. GAC has been demonstrated to be especially effective due to its large adsorption surface area.

GROUNDWATER: Underground water that saturates pores in soils or openings in rock.

NPL (National Priorities List): A list of the top-priority hazardous substance sites in the country that are eligible for investigation and cleanup under the federal Superfund program.

NITRATE: A salt of nitric acid, which is colorless, corrosive acid containing nitrogen.

PRP (Potentially Responsible Party): An individual, company, or other entity potentially responsible and therefore potentially liable for the cost of cleaning up contamination at a Superfund site.

ROD (Record of Decision): A public document that explains what cleanup alternative will be used at a specific NPL site. The ROD is based on information and technical analysis generated during the remedial investigation/feasibility study and consideration of public comments and community concerns.

VOC (Volatile Organic Compound): An organic (carbon containing) compound that evaporates readily at room temperature. VOCs are commonly used in dry cleaning, metal plating and machinery degreasing.

FOR MORE INFORMATION

The Superfund program places a high priority on community involvement during hazardous waste cleanups at Superfund sites. If you would like more information or have questions about the Consent Decree or other study-related activities within the Burbank Study Area, please contact the following individuals:

Fraser Felter
Community Relations Coordinator
U.S. EPA
75 Hawthorne Street (H-1-1)
San Francisco, CA 94105-3901
(415) 744-2181

Terry Wilson
Media Contact
U.S. EPA
75 Hawthorne Street (E-1)
San Francisco, CA 94105-3901
(415) 744-1578

Chris Stubbs
Remedial Project Manager
U.S. EPA
75 Hawthorne Street (H-6-4)
San Francisco, CA 94105-3901
(415) 744-2248

If you are not currently on the Burbank Study Area mailing list and would like to receive future fact sheets, please call EPA's Toll-Free Information Line at (800) 231-3075.

BURBANK STUDY AREA INFORMATION REPOSITORY

Copies of the Consent Decree and the Burbank Operable Unit Administration Record, which is a file containing other study-related documents have been placed for public review at the following five locations. If the copies are not available, contact Fraser Felter, Community Relations Coordinator, at (415) 744-2181.

California State University Northridge Library
18111 Nordhoff Street
Northridge, CA 91330
(818) 885-2285
Contact: Mary Finley

The University Research Library/U.C.L.A.
Public Affairs Service
405 Hilgard Avenue
Los Angeles, CA 90024
(213) 825-3135
Contact: Barbara Silvermail

L.A.D.W.P. Library
111 North Hope Street, Room 518
Los Angeles, CA 90012
(213) 481-4612
Contact: Joyce Purcell

City of Glendale Public Library
222 East Harvard Street
Glendale, CA 91205
(818) 956-2027
Contact: Lois Brown

City of Burbank Public Library
110 North Glenoaks Boulevard
Burbank, CA 91502
(818) 953-9741
Contact: Helen Wang

We Strongly Urge You to Review and Comment on the Burbank Operable Unit Consent Decree.

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Address: _____

Organization/Affiliation (if any): _____

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75 Hawthorne Street (H-1-1)
San Francisco, CA 94105-3901
Attn: Fraser Felter

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BARRY M. HARTMAN
Acting Assistant Attorney General
Environment & Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

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IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.) Civil Action No.
)
LOCKHEED CORPORATION,)
CITY OF BURBANK, CALIFORNIA,)
a Charter City, and)
WEBER AIRCRAFT, INC.,)
)
Defendants.)

Civil Action No.
CONSENT DECREE

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1 WHEREAS, the United States of America ("United States"), on
2 behalf of the Administrator of the United States Environmental
3 Protection Agency ("EPA"), has filed concurrently with this Con-
4 sent Decree ("Consent Decree" or "Decree") a complaint in this
5 matter pursuant to the Comprehensive Environmental Response, Com-
6 pensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended
7 by the Superfund Amendments and Reauthorization Act of 1986, Pub.
8 L. No. 99-499, 100 Stat. 1613 (1986) ("CERCLA"), seeking to com-
9 pel the Defendants in this action to perform certain remedial ac-
10 tions and to recover certain response costs that have been and
11 will be incurred by the United States in response to alleged
12 releases and threatened releases of hazardous substances from a
13 facility as defined in Section 101(9) of CERCLA, 42 U.S.C. §
14 9601(9), known as the Burbank Operable Unit Site ("the Site"),
15 located in Burbank, California; and

16 WHEREAS, the Burbank Operable Unit Site is a part of the San
17 Fernando Valley Superfund site #1 (also known as the North Hol-
18 lywood Area Superfund site), which was listed on the National
19 Priorities List ("NPL") in June of 1986, pursuant to CERCLA Sec-
20 tion 105, 42 U.S.C. § 9605; and

21 WHEREAS, the United States alleges that the past, present,
22 and/or potential migrations of "hazardous substances," as defined
23 in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), from the Site
24 constitute actual and/or threatened "releases," as defined in
25 Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and further al-
26 leges that the Lockheed Corporation ("Lockheed"), Weber Aircraft,

1 Inc. ("Weber"), and the City of Burbank, California (the "City")
2 are persons subject to liability under Section 107(a) of CERCLA,
3 42 U.S.C. § 9607(a); and

4 WHEREAS, Lockheed, Weber and the City are persons, as
5 defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(21); and

6 WHEREAS, pursuant to Sections 121 and 122 of CERCLA, 42
7 U.S.C. §§ 9621 and 9622, the United States, Lockheed, Weber and
8 the City have stipulated and agreed to the making and entry of
9 this Consent Decree prior to the taking of any testimony, and in
10 settlement of the claims alleged against Lockheed, Weber and the
11 City in the complaint; and

12 WHEREAS, the United States, Lockheed, Weber and the City
13 have agreed upon a settlement pursuant to which Lockheed is
14 obligated to fund and perform certain remedial work at the Site
15 and to make payments to the United States, the City is obligated
16 to fund and perform certain remedial work, and Weber is obligated
17 to contribute to the funding of certain remedial work; and

18 WHEREAS, the United States, Lockheed, Weber and the City
19 agree that the settlement of these claims is made in good faith
20 and in an effort to avoid expensive and protracted litigation but
21 without any admission or finding of liability or fault as to any
22 allegation or matter;

23 NOW, THEREFORE, it is ORDERED, ADJUDGED, AND DECREED as fol-
24 lows:
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1 I. DEFINITIONS

2 A. "Burbank Well Field" or "Well Field" shall mean the area
3 within the political boundaries of the City encompassing Burbank
4 Public Service Department wells 6A, 7, 10, 11A, 12, 13A, 14A, 15,
5 17 and 18, as shown on Appendix C. (This Appendix contains cor-
6 rections to the well numbers shown in Figure 2 of the Explanation
7 of Significant Differences ("ESD").

8 B. "Covered Matters" shall consist of any and all civil
9 liability to the United States for causes of action arising under
10 Sections 106 and 107(a) of CERCLA and Section 7003 of the
11 Resource Conservation and Recovery Act ("RCRA") for performance
12 of the Work; all Past Response Costs; and all Future Response
13 Costs that are incurred by the United States and paid by Lockheed
14 with respect to the Site prior to EPA's issuance of a Certificate
15 of Completion pursuant to Section XXXIV (Termination and
16 Satisfaction). Covered Matters specifically does not include
17 performance of any Remedial Investigation/Feasibility Study
18 ("RI/FS") other than that already completed for the Burbank
19 Operable Unit; additional response actions that may be imple-
20 mented pursuant to the final remedy or pursuant to any future
21 Explanation(s) of Significant Difference (other than actions that
22 Settling Work Defendants have agreed to perform pursuant to Sub-
23 part F of Section VII (Work To Be Performed)), Record(s) of Deci-
24 sion or Amendment(s) to any Record of Decision; costs or ac-
25 tivities related to any operable unit other than the Burbank
26 Operable Unit, including any future operable unit(s); any new en-
27 vironmental condition which is identified in the Basinwide RI/FS

1 or of which the United States is unaware at this time; or any
2 remedial actions that are necessary to implement the Record of
3 Decision ("ROD"), as modified by the Explanation of Significant
4 Differences ("ESD") and Subpart F of Section VII (Work To Be
5 Performed), other than the Work. Covered Matters also does not
6 include response costs incurred by the State of California, the
7 California Hazardous Substance Account, and any of the State's
8 agencies, representatives, contractors or subcontractors, unless
9 these costs were reimbursed by EPA under a cooperative agreement.

10 C. "City" shall mean the City of Burbank, California, a
11 charter city, and any of its divisions, departments and other
12 subdivisions. "City" shall not include any joint powers
13 authority of which the City of Burbank is a member.

14 D. "Day" shall mean a calendar day, unless expressly stated
15 to be a working day; provided, however, that in computing any
16 period of time under this Consent Decree, where the last day
17 would fall on a Saturday, Sunday, or federal or State holiday,
18 the period shall run until the close of business of the next
19 working day.

20 E. "Environment" shall have the meaning set forth in CERCLA
21 Section 101(8), 42 U.S.C. § 9601(8).

22 F. "EPA" shall mean the United States Environmental Protec-
23 tion Agency.

24 G. "Explanation of Significant Differences" ("ESD") shall
25 mean the document signed by the EPA Region IX Regional Ad-
26 ministrator on November 21, 1990, attached as Appendix B and in-
27 corporated herein by reference, which modifies the ROD.

1 H. "Fund" or "Superfund" shall mean the Hazardous Sub-
2 stances Superfund, referenced in Section 111 of CERCLA, 42 U.S.C.
3 § 9611.

4 I. "Future Response Costs" shall mean all costs including
5 but not limited to all administrative, indirect, enforcement, in-
6 vestigative, remedial, removal, oversight and monitoring costs
7 incurred by the United States in connection with the Site pur-
8 suant to CERCLA, subsequent to December 31, 1989 and prior to the
9 termination of this Consent Decree, except that the term shall
10 not include the costs of performing any RI/FS or the costs of im-
11 plementing any future Record(s) of Decision, Explanation(s) of
12 Significant Differences (other than an Explanation of Significant
13 Differences setting forth the changes provided for in Subpart F
14 of Section VII (Work To Be Performed) or Amendment(s) to
15 Record(s) of Decision.

16 J. "Lockheed" shall mean the Lockheed Corporation, incor-
17 porated in the state of Delaware, and any of its subsidiaries,
18 parents, affiliates, predecessors and successors.

19 K. "Oversight Costs" shall mean all costs incurred by the
20 United States in overseeing the Work and assessing the adequacy
21 of the City's and Lockheed's performance pursuant to this Decree,
22 including but not limited to the costs of reviewing or developing
23 plans or reports.

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1 L. "Past Response Costs" shall mean all costs, including
2 but not limited to all administrative, indirect, enforcement, in-
3 vestigative, remedial, removal, oversight and monitoring costs
4 incurred by the United States in connection with the Site, prior
5 to and including December 31, 1989.

6 M. "Point of Interconnection" shall mean the physical point
7 of transfer of the treated groundwater after it goes through the
8 booster station but before it enters the blending facilities.
9 For purposes of this Consent Decree, such transfer shall take
10 place at the upstream flange of a water meter located on a
11 pipeline between the booster station and the blending facilities
12 and used to measure the quantity of water to be transferred, as
13 depicted in Appendix E.

14 N. "Point of Delivery" shall mean the physical point of
15 transfer of the treated groundwater from Lockheed to the City.
16 For the purposes of this Consent Decree, such transfer shall take
17 place at the downstream flange of a meter that is located between
18 the groundwater Treatment Plant and the Valley Forebay Facility
19 and is used to measure the quantity of water to be transferred,
20 as depicted in Appendix E.

21 O. "Point of MWD Connection" shall mean the physical point
22 of transfer of the Metropolitan Water District ("MWD") blending
23 water from the MWD pipeline to the blending facilities. For the
24 purposes of this Decree, such transfer shall take place at the
25 downstream flange of a meter that is located between the MWD
26 pipeline and the blending facilities and is used to measure the
27 quantity of water to be transferred, as depicted in Appendix E.

1 P. "Point of Water System Introduction" shall mean the
2 physical point of transfer of the blended water from the blending
3 facilities to the City's public water supply distribution system.
4 For the purposes of this Consent Decree, such transfer shall take
5 place at the downstream flange of a valve located on the pipeline
6 between the blending facilities and the City's public water
7 supply distribution system, as depicted in Appendix E.

8 Q. "Record of Decision" ("ROD") shall mean the document
9 signed on June 30, 1989, by the EPA Region IX Deputy Regional Ad-
10 ministrator, acting for the Regional Administrator, attached
11 hereto as Appendix A and incorporated herein by reference.

12 R. "Release" shall have the meaning set forth in CERCLA
13 Section 101(22), 42 U.S.C. § 9601(22).

14 S. "Remedial Action Work" shall mean those activities
15 (including all operation and maintenance required by this Consent
16 Decree) to be undertaken by Settling Work Defendants to implement
17 the final plans and specifications submitted by Settling Work
18 Defendants pursuant to the Remedial Design Work Plan approved by
19 EPA pursuant to Section VII (Work To Be Performed). The Remedial
20 Action Work does not constitute all of the remedial action
21 selected in the ROD (as modified by the ESD and Subpart F of Sec-
22 tion VII (Work To Be Performed)).

23 T. "Remedial Design Work" shall mean the phase of the Work
24 required by this Consent Decree wherein, consistent with the ROD
25 (as modified by the ESD and Subpart F of Section VII (Work To Be
26 Performed)), this Decree and the National Contingency Plan, 40
27 C.F.R. Section 300 et seq. ("NCP"), the engineering plans and

1 technical specifications are to be developed by Settling Work
2 Defendants, for approval by EPA, and on which implementation of
3 the Remedial Action Work shall be based.

4 U. "Settling Defendants" shall mean Lockheed, Weber and the
5 City.

6 V. "Settling Parties" shall mean the United States of
7 America, Lockheed, Weber and the City.

8 W. "Settling Work Defendants" shall mean Lockheed and the
9 City.

10 X. "State" shall mean the State of California.

11 Y. "Statement of Work" shall mean the document containing
12 EPA's best effort to provide a detailed description of the steps
13 necessary to accomplish the Work, attached as Appendix D and in-
14 corporated herein by reference, as it may be modified in accor-
15 dance with Section XXIV (Modification).

16 Z. "Site" (when capitalized) or "Burbank Operable Unit
17 Site" shall mean the areal extent of TCE and/or PCE groundwater
18 contamination that is presently located in the vicinity of the
19 Burbank Well Field and including any areas to which such
20 groundwater contamination migrates.

21 AA. "System Operation Date" for each phase described in
22 Subpart E of Section VII (Work To Be Performed) shall mean the
23 first day on which Lockheed begins extracting and treating
24 groundwater with the facilities constructed as part of the
25 Remedial Action Work for that phase.

26 BB. "United States" shall mean the United States of
27 America.

1 CC. "Valley Forebay Facility" shall mean the structure
2 owned by the City and designed to receive the treated water as a
3 regulating reservoir for the booster station depicted in Appendix
4 E. The reservoir has an overflow elevation of 655 feet.

5 DD. "Weber" shall mean Weber Aircraft, Inc., incorporated
6 in the state of Delaware, and any of its subsidiaries, parents,
7 affiliates, predecessors and successors.

8 EE. "Work" shall mean the performance of the Remedial
9 Design Work and the Remedial Action Work in a manner which ac-
10 complishes all of the requirements of Section VII (Work To Be
11 Performed) of this Consent Decree.

12 FF. "Working Day" shall mean a day other than a Saturday,
13 Sunday, or federal or State holiday.

14 II. JURISDICTION

15 A. The Court has jurisdiction over the subject matter of
16 and the parties to this Consent Decree pursuant to CERCLA,
17 federal question jurisdiction, and the status of the United
18 States as plaintiff. Sections 106, 107, and 113 of CERCLA, 42
19 U.S.C. §§ 9606, 9607, and 9613, and 28 U.S.C. §§ 1331, 1345.

20 B. Settling Defendants do not contest and agree not to con-
21 test the authority of the United States to maintain this action
22 or the Court's jurisdiction to enter and enforce this Consent
23 Decree.

24 III. DENIAL OF LIABILITY

25 Settling Defendants deny any and all legal or equitable
26 liability under any federal, State, or local statute, regulation
27 or ordinance, or the common law, for any response costs, damages

1 or claims caused by or arising out of conditions at or arising
2 from the Burbank Well Field or the Site. By entering into this
3 Consent Decree, or by taking any action in accordance with it,
4 Settling Defendants do not admit any allegations contained herein
5 or in the complaint, nor do Settling Defendants admit liability
6 for any purpose or admit any issues of law or fact or any responsibility
7 hazardous substance into the environment. Nothing in this Sec-
8 tion shall alter Settling Defendants' agreement not to challenge
9 the Court's jurisdiction as set forth in Section II
10 (Jurisdiction).

11 IV. SITE BACKGROUND

12 The following is a summary of the Site background as alleged
13 by the United States which, for the purposes of this Decree, Set-
14 tling Defendants neither admit nor deny:

15 A. The North Hollywood Area Superfund site is one of four
16 sites in the San Fernando Valley Groundwater Basin ("Basin")
17 which were placed on the National Priorities List ("NPL") concur-
18 rently in June of 1986. Remediation of groundwater in the Basin
19 is a collaborative undertaking of EPA, the Los Angeles Department
20 of Water and Power ("DWP"), the California Department of Health
21 Services ("DHS") and the California Regional Water Quality Con-
22 trol Board ("RWQCB").

23 B. The Burbank Operable Unit Site is a part of the North
24 Hollywood Area Superfund site (also known as the San Fernando
25 Valley Area #1 Superfund site). The Burbank Operable Unit Site
26 presently includes the Northeast corner of the North Hollywood
27 Area Superfund site, as well as the areas to which the plume of

1 TCE and PCE has spread beyond the original boundaries drawn at
2 the time the North Hollywood Area Superfund site was listed on
3 the NPL. Based on the nature of the groundwater contamination at
4 the Site, EPA has decided to institute remedial actions at the
5 Site, as detailed in the ROD, ESD and this Consent Decree as a
6 separate "Operable Unit," prior to completion of the Basinwide
7 Remedial Investigation/Feasibility Study (described below) and
8 decisions on what further remedial actions may be necessary in
9 the Basin and/or at the Site.

10 C. Concentrations of volatile organic compounds ("VOCs")
11 exceeding State Action Levels ("SALs") and Federal Maximum Con-
12 taminant Levels ("MCLs") were first discovered in the Basin in
13 1980. Since that time, the RWQCB and DHS have supervised soil
14 and groundwater sampling and analysis in the Burbank area.
15 Presently, VOC family members trichloroethylene ("TCE") and
16 perchloroethylene ("PCE") have been found in the Burbank Well
17 Field at levels that exceed the MCLs for these hazardous sub-
18 stances. These materials are commonly used for machinery
19 degreasing, dry cleaning, and metal plating. The Federal MCL for
20 TCE in drinking water is set at 5 parts per billion ("ppb"). The
21 State MCL for PCE in drinking water is also set at 5 ppb. To
22 date, levels of TCE of up to 1,800 ppb and levels of PCE of up to
23 590 ppb have been measured at the City of Burbank's extraction
24 wells. Higher levels of these hazardous substances have been
25 measured at other wells within the Site. EPA, in conjunction
26 with RWQCB, DWP and DHS, has conducted and continues to conduct
27 source investigations at the Site.

1 D. In August of 1987, EPA entered into a cooperative agree-
2 ment with DWP which allowed DWP to conduct a Basin-wide Remedial
3 Investigation ("RI"). EPA has also entered into a multi-site
4 cooperative agreement with DHS which funds DHS participation in
5 remedial activities at many California Superfund sites, including
6 those in the Basin, under authority of CERCLA Section 104, 42
7 U.S.C. § 9604. In December of 1989, DWP completed construction
8 of the North Hollywood Aeration Facility to address contamination
9 at the North Hollywood Operable Unit, the first Operable Unit in
10 the Basin. Treated groundwater from the North Hollywood Aeration
11 Facility is chlorinated and released to the public water supply,
12 where it is used for drinking water purposes. In September of
13 1989, EPA entered into a cooperative agreement with the RWQCB
14 which funds source investigation and source control work in the
15 Basin.

16 E. The Burbank Operable Unit is the second Operable Unit in
17 the Basin. In October of 1988, the Burbank Operable Unit
18 Feasibility Study ("OUPS") was released. The OUPS set forth a
19 range of remedial actions which EPA considered for the Burbank
20 Operable Unit Site. The Record of Decision (ROD) signed on June
21 30, 1989 selected an interim remedy for the Site. This remedy
22 was modified by the Explanation of Significant Differences
23 ("ESD") issued by EPA on November 21, 1990. EPA has decided to
24 include in this Decree some additional modifications to the in-
25 terim remedy, as provided in Subpart F of Section VII (Work To Be
26 Performed). These modifications do not represent a fundamental
27 change to the remedy.

1 V. PURPOSE

2 A. The purpose of this Consent Decree is to resolve
3 amicably a portion of the existing dispute between the Settling
4 Parties as to whether remedial action is necessary and ap-
5 propriate with respect to the Burbank Operable Unit Site and to
6 settle the claims asserted against Settling Defendants in the
7 complaint filed in this matter.

8 B. This Consent Decree is also intended to serve the public
9 interest by protecting the public health, welfare, and the en-
10 vironment from releases or threatened releases of hazardous sub-
11 stances from facilities located in or near the Site by implemen-
12 tation of the Work set out in Section VII (Work To Be Performed)
13 of this Consent Decree and to obtain reimbursement from Lockheed
14 for certain of the United States' response costs as specified in
15 this Consent Decree.

16 C. The Work and the tasks described in Subpart B of Section
17 VII (Work To Be Performed) are intended to implement a portion of
18 the ROD, as modified by the ESD and to meet the requirements of
19 Subpart F of Section VII (Work To Be Performed). The Settling
20 Parties recognize that the remedy selected in the ROD, ESD and
21 this Decree may not constitute the final remedy for groundwater
22 at the Site. The Settling Parties also recognize that perfor-
23 mance of this Consent Decree will not fully implement the ROD and
24 ESD for the Burbank Operable Unit.

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1 VI. BINDING EFFECT

2 A.1. The undersigned representative of Lockheed certifies
3 that Lockheed is fully authorized to enter into the terms and
4 conditions of this Decree and that he or she is fully authorized
5 to execute this document and legally bind Lockheed to the provi-
6 sions of this Decree.

7 2. The undersigned representative of the City certifies
8 that the City is fully authorized to enter into the terms and
9 conditions of this Decree and that he or she is fully authorized
10 to execute this document and legally bind the City to the provi-
11 sions of this Decree.

12 3. The undersigned representative of Weber certifies that
13 Weber is fully authorized to enter into the terms and conditions
14 of this Decree and that he or she is fully authorized to execute
15 this document and legally bind Weber to the provisions of this
16 Decree.

17 4. The undersigned Assistant Attorney General for the En-
18 vironment and Natural Resources Division of the Department of
19 Justice certifies that the United States is fully authorized to
20 enter into the terms and conditions of this Decree and that he or
21 she is fully authorized to execute this document and legally bind
22 the United States to the provisions of this Decree.

23 B. The person(s) identified by name and address in Section
24 XXIII (Form of Notice) of this Consent Decree as the recipient
25 for each Settling Defendant is authorized by that Settling Defen-
26 dant to accept service of process by mail on its behalf with
27 respect to all matters arising under this Consent Decree. For

1 purposes of entry and enforcement of this Consent Decree only, each S
2 manner and to waive the formal service requirements set forth in
3 Rule 4 of the Federal Rules of Civil Procedure, including service
4 of a summons, and any applicable local rules of this Court.

5 C. This Consent Decree shall apply to and be binding upon
6 Settling Defendants, their officers, officials, directors, suc-
7 cessors, and assigns, and upon the United States and its repre-
8 sentatives.

9 D. Each Settling Work Defendant agrees to provide a copy of
10 this Consent Decree, as entered, along with all relevant addi-
11 tions and modifications to this Consent Decree, as appropriate,
12 to each person, including all contractors and subcontractors,
13 retained by that Settling Work Defendant to perform the Work re-
14 quired by this Decree within thirty (30) days of retainer and to
15 condition any contract for the Work on compliance with this Con-
16 sent Decree.

17 E.1. No change in ownership of Lockheed, property or assets
18 owned by Lockheed or the corporate status of Lockheed, including
19 but not limited to any transfer of real or personal property,
20 shall alter EPA or Settling Defendants' rights and obligations
21 under this Consent Decree, including access rights under this
22 Decree. In the event that Lockheed transfers any real property
23 it owns in the City of Burbank prior to termination of this
24 Decree pursuant to Section XXIV (Termination and Satisfaction),
25 Lockheed shall provide a copy of this Decree to the transferee
26
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1 prior to consummating the transaction and evidence such action by
2 providing a copy of its transmittal letter to EPA within ten (10)
3 working days of consummating the transaction.

4 2. No change in ownership of property or assets owned by
5 the City or the legal status of the City, including but not
6 limited to any transfer of real or personal property, shall alter
7 EPA or Settling Defendants' rights and obligations under this
8 Consent Decree, including access rights under this Decree. In
9 the event that the City transfers any of the real property it
10 owns at 164 West Magnolia Boulevard in the City of Burbank prior
11 to termination of this Decree pursuant to Section XXXIV
12 (Termination and Satisfaction), the City shall provide a copy of
13 this Decree to the transferee prior to consummating the transac-
14 tion and evidence such action by providing a copy of its trans-
15 mittal letter to EPA within ten (10) working days of consummating
16 the transaction. Notwithstanding this Subpart, nothing in this
17 Decree shall be construed as or shall act as a prohibition on the
18 City's ability to freely vacate, abandon or otherwise dispose of
19 its streets, rights of way or any other interest it has in
20 streets and rights of way, except insofar as:

21 a. Lockheed has previously notified the City that ac-
22 cess to particular segment(s) of such City streets or rights of
23 way is necessary to perform the Remedial Design Work or Remedial
24 Action Work, and such access has not been determined to be un-
25 necessary to perform the Remedial Design Work or Remedial Action
26 Work pursuant to the dispute resolution provisions of Section XX
27 (Dispute Resolution); or

1 b. EPA has previously notified the City that access to
2 particular segment(s) of such City streets or rights of way is
3 necessary to perform or have a potentially responsible party per-
4 form the tasks described in Subpart B of Section VII (Work To Be
5 Performed) and such access has not been determined to be unneces-
6 sary to perform the tasks described in Subpart B of Section VII
7 (Work To Be Performed) pursuant to the dispute resolution provi-
8 sions of Section XX (Dispute Resolution).

9 3. No change in ownership of Weber, property or assets
10 owned by Weber or the corporate status of Weber, including but
11 not limited to any transfer of real or personal property, shall
12 alter EPA or Settling Defendants' rights and obligations under
13 this Consent Decree, including access rights under this Decree.
14 In the event that Weber transfers any of the real property it
15 owns at either 2820 Ontario Street or 3000 North San Fernando
16 Road in the City of Burbank prior to termination of this Decree
17 pursuant to Section XXXIV (Termination and Satisfaction), Weber
18 shall provide a copy of this Decree to the transferee prior to
19 consummating the transaction and evidence such action by provid-
20 ing a copy of its transmittal letter to EPA within ten (10) work-
21 ing days of consummating the transaction.

22 VII. WORK TO BE PERFORMED

23 A. The Work to be performed pursuant to this Consent Decree
24 shall consist of the tasks described in Subparts A.1 through A.5,
25 below.

26 1. The design and construction of all facilities necessary
27 to:

1 a. extract 12,000 gallons per minute ("gpm") of groundwater
2 from the Burbank Operable Unit Site;

3 b. treat the extracted groundwater to a level that does not
4 exceed drinking water standards promulgated on or before January
5 31, 1991 and still in effect at the time of the extraction, ex-
6 cept the MCL for nitrate;

7 c. deliver 9,000 gpm of the treated water to the Point of
8 Delivery;

9 d. reinject into the San Fernando Valley Groundwater Basin
10 the treated water which is not accepted by the City at the Point
11 of Delivery or discharged in compliance with Subpart F of this
12 Section, up to the capacity limits established pursuant to the
13 Statement of Work;

14 e. discharge any treated groundwater allowed to be dis-
15 charged pursuant to Subpart F of this Section;

16 f. perform monitoring necessary to design, construct,
17 operate and maintain the facilities described in Subparts A.1.a
18 through A.1.e of this Section; and

19 g. monitor the effectiveness of the foregoing facilities in
20 achieving the extraction, treatment and reinjection standards es-
21 tablished by Subparts F and G of this Section.

22 2. The operation and maintenance of the facilities
23 described in Subpart A.1 for the time periods specified in Sub-
24 part E.

25 3. The design and construction of all facilities necessary
26 to:

1 a. accept 9,000 gpm of treated groundwater at the Point of
2 Delivery;

3 b. disinfect such treated groundwater;

4 c. transport the disinfected groundwater to the Valley
5 Forebay Facility and from there to the Point of Interconnection;

6 d. perform monitoring necessary to design, construct,
7 operate and maintain the facilities described in Subparts A.3.a
8 through A.3.c; and

9 e. monitor the effectiveness of the foregoing facilities in
10 achieving the disinfection standards established by Subpart G of
11 this Section.

12 4. The operation and maintenance of the facilities
13 described in Subpart A.3 for the time periods specified in Sub-
14 part E.

15 5. The operation and routine maintenance (as described in
16 the Statement of Work) of the facilities constructed pursuant to
17 Subpart B.1 of this Section for the periods specified in Subpart
18 E.

19 B. The Work does not include, and Settling Defendants have
20 not agreed to perform, the following tasks:

21 1. The design and construction of all facilities necessary
22 to:

23 a. receive 9,000 gpm of disinfected groundwater at the
24 Point of Interconnection;

25 b. blend such disinfected groundwater with MWD supplied
26 water ("blending water") to achieve a combined water supply in
27 the amount of 18,000 gpm ("blended water");

1 c. transport the disinfected groundwater from the Point of
2 Interconnection to the blending facilities;

3 d. transport 9,000 gpm of blending water from its MWD
4 source to the blending facilities;

5 e. transport 18,000 gpm of blended water from the blending
6 facilities to the Point of Water System Introduction;

7 f. perform monitoring necessary to design, construct,
8 operate and maintain the facilities described in Subparts B.1.a
9 through B.1.e; and

10 g. monitor the effectiveness of the foregoing facilities in
11 achieving the blending standards established by Subpart H.1 of
12 this Section.

13 2. The performance of any non-routine maintenance with
14 respect to the facilities described in Subpart B.1 for the time
15 period during which the Work is being performed.

16 C.1. Appendix E to this Decree, which is hereby incor-
17 porated into this Decree by reference, consists of three
18 schematics which set out in general the relationship between:

19 a. Some of the facilities to be designed, constructed,
20 operated and maintained by each Settling Work Defendant pursuant
21 to this Decree, and

22 b. Some of the facilities described in Subpart B of this
23 Section.

24 2. In the case of any discrepancy between Appendix E and
25 the Work as described in the rest of this Section or the tasks
26 described in Subpart B of this Section, the wording of this Sec-
27 tion shall prevail over Appendix E.

1 D.1. The City of Burbank shall be solely responsible for
2 performing all of the Work required by Subparts A.3, A.4 and A.5
3 of this Section, subject to reimbursement by Lockheed (in an
4 amount not to exceed \$200,000) as provided in Section XII
5 (Financial Assurance and Trust Accounts); and Lockheed shall be
6 solely responsible for performing all other Work required by this
7 Decree.

8 2. Lockheed and the City agree to coordinate performance of . .
9 their respective portions of the Work with each other to ac-
10 complish the timely and satisfactory completion of all of the
11 Work.

12 3. EPA presently intends to seek to have the tasks
13 described in Subpart B of this Section performed through enforce-
14 ment actions or judicial settlements with potentially responsible
15 parties ("PRPs"). These PRPs may consist of or include the Set-
16 tling Defendants, pursuant to the reservation of EPA's enforce-
17 ment authority in Subparts C and/or D of Section XVII
18 (Reservation and Waiver of Rights), except insofar as EPA has
19 agreed pursuant to Subpart D.2 of that Section not to pursue
20 Weber or the City. If (a) person(s) other than the Settling
21 Defendants perform(s) any of the tasks described in Subpart B,
22 Lockheed and the City agree to coordinate performance of their
23 respective portions of the Work with any tasks being performed by
24 any other person(s) to accomplish the timely and satisfactory
25 completion of the Work and the tasks described in Subpart B of
26 this Section. Nothing in this Section shall preclude the United
27 States from instituting proceedings in this action or in a new

1 action or issuing an order, pursuant to the reservations in Sub-
2 parts C and/or D of Section XVII (Reservation and Waiver of
3 Rights), seeking to compel Lockheed to perform the tasks
4 described in Subpart B of this Section.

5 E. The Work shall be implemented, subject to EPA oversight
6 and approval, pursuant to the schedule contained in and in accor-
7 dance with the requirements of this Decree, the Statement of Work
8 attached hereto as Appendix D and any schedule approved pursuant
9 to these documents, which provides for the Work and the tasks
10 described in Subpart B of this Section to be performed in the
11 following phases:

12 1. During phase one, all facilities necessary to extract,
13 treat and deliver 6,000 gpm of treated and disinfected
14 groundwater to the blending facilities, 9,000 gpm of blending
15 water to the blending facilities, and 18,000 gpm of blended water
16 to the Point of Water System Introduction, to accept and blend
17 the treated water and to monitor performance of the foregoing
18 facilities shall be designed and constructed. These facilities
19 shall be operated and maintained from the System Operation Date
20 for phase one until the System Operation Date for phase two, ex-
21 cept insofar as the Statement of Work permits otherwise.

22 2. During phase two, all facilities necessary to extract,
23 treat and deliver an additional 3,000 gpm of treated and disin-
24 fected groundwater to the blending facilities, to reinject
25 treated groundwater which is not accepted by the City (such rein-
26 jection capacity to consist of 5,500 gpm, unless EPA decides that
27 more reinjection capacity is needed, pursuant to the provisions

1 in the Statement of Work) and to monitor performance of the new
2 facilities, shall be designed and constructed. These facilities,
3 and the facilities from phase one, shall be operated and main-
4 tained from the System Operation Date for phase two until the
5 System Operation Date for phase three, except insofar as the
6 Statement of Work permits otherwise.

7 3. During phase three, all facilities necessary to extract,
8 treat and reinject an additional 3,000 gpm of treated groundwater
9 and to monitor performance of the new facilities, shall be
10 designed and constructed. If EPA has determined, pursuant to the
11 provisions of the Statement of Work, that more than an additional
12 3,000 gpm of reinjection facilities are needed, such facilities
13 shall also be constructed during phase three. All phase three
14 facilities, and the facilities from phases one and two, shall be
15 operated and maintained for a period of two years from the System
16 Operation Date for phase three, except insofar as the Statement
17 of Work permits otherwise; provided, however, that (1) if there
18 is a suspension of the operation of the extraction and treatment
19 system (including but not limited to any allowed by the Statement
20 of Work), the time period of such suspension shall not be in-
21 cluded in computing the two-year period during which all of the
22 phase one, two and three facilities must be operated and (2) if
23 the extraction, treatment and/or reinjection facilities are
24 operating but are not meeting the standards required by Subpart G
25 for such activities, the period of operation during which such
26
27

1 standards are not met shall not be included in computing the
2 two-year period during which all of the phase one, two and three
3 facilities must be operated.

4 F. This Subpart contains nonsignificant modifications to
5 the remedy selected in the ROD and ESD. Settling Work Defendants
6 agree to comply with the requirements of this Subpart in im-
7 plementing the remedy, and also agree that these requirements
8 constitute part of the Work.

9 1. Lockheed may discharge extracted water to any offsite
10 conveyance(s) leading to a Publicly Owned Treatment Works
11 ("POTW") or to any offsite conveyance(s) leading to any water(s)
12 of the United States for a period of up to thirty (30) (not
13 necessarily consecutive) days between the System Operation Date
14 for any phase and sixty days after that System Operation Date,
15 provided that the following requirements are met:

16 a. All substantive and procedural requirements applicable
17 to such discharge at the time of such discharge shall be met, in-
18 cluding any limits on the quantity of water to be discharged;

19 b. The total combined amount of any discharge(s) of ex-
20 tracted water to any offsite conveyance(s) leading to any POTW(s)
21 at any time shall not exceed 6,000 gpm; and

22 c. The total combined amount of extracted water discharged
23 to any offsite conveyance(s) leading to any POTW(s) and to any
24 offsite conveyance(s) leading to any water(s) of the United
25 States at any time shall not exceed 12,000 gpm.

1 2. Lockheed may discharge extracted water to any offsite
2 conveyance(s) leading to any Publicly Owned Treatment Works
3 ("POTW") or to any offsite conveyance(s) leading to any water(s)
4 of the United States for a period of up to five (not necessarily
5 consecutive) days during any month other than the sixty days fol-
6 lowing each phase's System Operation Date, if the water is not
7 accepted by the City and cannot be reinjected, provided that the
8 requirements of Subparts F.1.a through F.1.c of this Section are
9 met for such discharge. Nothing in this Subpart shall excuse
10 Lockheed from stipulated penalties for failure to comply with any
11 other requirements of this Decree, including but not limited to
12 the requirement to construct reinjection capacity as required by
13 this Decree.

14 3. Lockheed may discharge development and purge water from
15 wells to any offsite conveyance(s) leading to a Publicly Owned
16 Treatment Works ("POTW") or to any offsite conveyance(s) leading
17 to any water(s) of the United States, provided that any such dis-
18 charge is in compliance with all substantive and procedural re-
19 quirements applicable to such discharge at the time of such dis-
20 charge. Water discharged pursuant to this Subpart F.3 shall not
21 be included in the limits on the amount of water allowed to be
22 discharged pursuant to Subparts F.1.b, F.1.c and F.2 of this Sec-
23 tion.

24 4. Any water containing hazardous constituents and stored
25 onsite for more than ninety days shall be handled as a hazardous
26 waste onsite. Such storage shall be accomplished in compliance
27 with the substantive requirements of 40 C.F.R. Part 264, Subparts

1 I and J, and 22 California Code of Regulations, Chapter 30, Ar-
2 ticle 24 ("Use and Management of Containers") and Article 25
3 ("Tank Systems"). These requirements are applicable or relevant
4 and appropriate requirements for the Remedial Action Work.

5 5. With respect to requirements for the operation of the
6 groundwater Treatment Plant's VOC-stripper (i.e., air stripper
7 with vapor phase granulated activated carbon absorption units
8 and/or steam stripper), South Coast Air Quality Management Dis-
9 trict ("SCAQMD") Rule 1167 was rescinded in December of 1988 and
10 Settling Work Defendants are not required to comply with this
11 Rule despite any other language in this Decree. Furthermore,
12 some of the regulations cited in the ROD have been changed by the
13 SCAQMD. The only requirements of the SCAQMD that Lockheed is re-
14 quired to comply with in performing Work onsite are the substan-
15 tive requirements of the following applicable or relevant and ap-
16 propriate requirements for the groundwater Treatment Plant (i.e.,
17 air stripper with vapor phase granulated activated carbon ("GAC")
18 absorption units and/or steam stripper):

19 a. SCAQMD Regulation XIII, as amended through June 28,
20 1990; and

21 b. SCAQMD Rule 1401, as adopted on June 1, 1990.

22 G. The Work to be performed shall, at a minimum, achieve
23 the following standards during system operation:

24 1. All groundwater to be extracted shall be treated by
25 Lockheed to a level that does not exceed drinking water standards
26 (other than the MCL for nitrate), including secondary drinking
27

1 water standards, in effect at the time of the extraction,
2 provided that such standards were promulgated by EPA or the State
3 on or before January 31, 1991. These drinking water
4 standards include, but are not limited to, the following chemi-
5 cals and MCLs:

6 Chemical	7 MCL
8 PCE	9 5.0 micrograms/liter
10 TCE	11 5.0 micrograms/liter

12 2. All extracted groundwater reinjected by Lockheed shall
13 meet the following requirements:

14 a. Compliance with RCRA Section 3020;

15 b. All drinking water standards (other than the MCL for
16 nitrate) in effect at the time of such reinjection,
17 provided such standards were promulgated by EPA or the
18 State on or before January 31, 1991; and

19 c. Nitrate levels that comply with the Los Angeles River
20 Basin Plan, including the State Water Resources Control
21 Board Resolution No. 68-16, "Statement of Policy with
22 Respect to Maintaining High Quality of Waters in
23 California." See Los Angeles River Basin Plan 4B,
24 Chapter 4, Pages I-4-2 to I-4-3.

25 3. All treated groundwater that is accepted at the Point of
26 Delivery shall be disinfected and then blended by the City to
27 meet all legal requirements for introduction of the blended water
into the City's water supply system, including, but not limited
to, the MCL for nitrate.

1 4. In order to prevent any reduction in the overflow eleva-
2 tion (high water level) of the Valley Forebay Facility, Lockheed
3 shall provide treated groundwater at pressure sufficient to
4 enable its physical movement from the Point of Delivery to the
5 Valley Forebay Facility.

6 5. In extracting groundwater in the amounts required by
7 this Decree, Lockheed shall extract from the most VOC-
8 contaminated zones of the aquifer.

9 6. Lockheed shall design, construct, operate and maintain
10 the facilities it is required to design, construct, operate and
11 maintain in such a way as to ensure that delivery of water to the
12 Point of Delivery that does not meet the drinking water standards
13 promulgated and in effect on the date of delivery (other than the
14 MCL for nitrate), regardless of when any such standards were
15 promulgated, shall result in the immediate, and, in all cases
16 where possible, automatic shut-down of the groundwater Treatment
17 Plant and water delivery system. Such a shut-down shall not, in
18 and of itself, release Lockheed from any other requirement of
19 this Decree and specifically shall not, in and of itself, affect
20 the requirement that Lockheed pay stipulated penalties for
21 failure to deliver water to the Point of Delivery in the amounts
22 and of the quality required by this Decree.

23 H.1. The City shall accept all treated groundwater provided
24 by Lockheed at the Point of Delivery which satisfies the treat-
25 ment standards established by Subpart C of this Section up to an
26 amount which, when blended with the blending water, will meet the
27 City's Monthly Average Minimum Day Water Demand (as defined in

1 the Statement of Work) without resulting in a nitrate concentra-
2 tion in the blended water that exceeds the promulgated MCL for
3 nitrate in effect at that time; provided however that, in order
4 to maximize the City's use of treated groundwater while providing
5 a margin of safety in achieving compliance with the MCL for
6 nitrate, the City shall be deemed to be in compliance with this
7 Subpart if it:

8 a. Maximizes the use of blended water to meet the City's
9 Monthly Average Minimum Day Water Demand and the level of nitrate
10 in the blended water is between sixty-seven percent (67%) and
11 eighty-nine percent (89%) of the promulgated MCL for nitrate that
12 is in effect at the time of the blending at all times when the
13 nitrate level in the treated groundwater supplied by Lockheed ex-
14 ceeds sixty-seven percent (67%) of the MCL for nitrate promul-
15 gated and in effect at the time the water is delivered to the
16 City, and

17 b. Maximizes the use of unblended treated groundwater sup-
18 plied by Lockheed to meet the City's Average Minimum Day Water
19 Demand at all times when the nitrate level in the treated
20 groundwater is below sixty-seven percent (67%) of the promulgated
21 MCL for nitrate in effect at the time the water is delivered to
22 the City.

23 2. Notwithstanding the requirements of Subpart H.1 of this
24 Section, the City shall not be charged a stipulated penalty for
25 failure to meet a nitrate level specified in that Subpart unless
26
27

1 the nitrate concentrations of the blended water exceed the
2 promulgated MCL for nitrate in effect at the time of the blend-
3 ing.

4 3. The acceptance of water by the City shall consist of en-
5 suring the physical movement of treated water which is delivered
6 to the Point of Delivery to the first measurable point beyond the
7 Point of Delivery.

8 4. Lockheed shall extract, treat and deliver groundwater to
9 the City at the Point of Delivery that satisfies the treatment
10 standards established by Subpart G of this Section in an amount
11 which satisfies the requirements of Subpart E of this Section, as
12 limited by the amount of water the City is required to accept
13 pursuant to Subpart H.1 of this Section. Lockheed shall extract,
14 treat and reinject or discharge, in compliance with Subparts F
15 and G of this Section, additional groundwater such that the total
16 amount of water extracted, treated and then delivered to the
17 City, reinjected or discharged equals or exceeds the level of
18 groundwater extraction and treatment Lockheed is required, pur-
19 suant to Subpart E, to accomplish during the applicable phase.

20 I.1. If Lockheed is not delivering treated groundwater to
21 the Point of Delivery which meets the promulgated drinking water
22 standards, including primary and secondary drinking water stan-
23 dards, in effect at the time the water is delivered (other than
24 the MCL for nitrate), the City shall not be obligated to meet the
25 operation requirements of Subpart A.4 and A.5 of this Section.

26 2. Lockheed shall not be obligated to meet the requirements
27 of Subpart H.4 of this Section if:

1 a. The City is not accepting treated groundwater at the
2 Point of Delivery which it is required to take from Lockheed by
3 Subpart H.1 of this Section; or

4 b. A new drinking water standard is promulgated after
5 January 31, 1991, EPA has identified such standard as applicable
6 or relevant and appropriate for the treated groundwater and
7 necessary to protect public health or the environment and such
8 standard cannot be met without modifying the facilities to be
9 constructed pursuant to Subpart A of this Section or changing
10 their operation;

11 J. Commencing on the System Operation Date for phase one of
12 the Work, Lockheed shall, at a minimum, sample and analyze the
13 treated groundwater from the groundwater Treatment Plant no less
14 often than weekly using EPA Method 502.2 or an alternative method
15 approved by EPA in writing. Lockheed shall also perform all sam-
16 pling and analysis it is required to perform pursuant to the
17 Statement of Work. For purposes of this Consent Decree, a given
18 sample of treated groundwater shall be considered representative
19 of treated groundwater from the groundwater Treatment Plant from
20 the time the given sample was taken until the time at which the
21 next sample is taken; provided, however, that a given sample of
22 treated groundwater shall only be considered representative for
23 times during which the groundwater Treatment Plant is operating.

24 K. The Work shall be performed in accordance with the
25 Decree, including the terms, standards and specifications set
26 forth in this Section, in the Statement of Work and in any
27 deliverables approved by EPA pursuant to such documents.

1 L. None of the Settling Parties has agreed, pursuant to
2 this Decree, to decommission or dismantle the blending facility
3 or groundwater Treatment Plant to be constructed as part of the
4 Work, and this Decree shall not be construed as an agreement by
5 any Settling Party to perform such actions.

6 M.1. The onsite Remedial Action Work, as designed, shall
7 meet the substantive standards of all "applicable requirements"
8 and "relevant and appropriate requirements," as those terms are
9 defined in CERCLA Section 121(d), 42 U.S.C. § 9621 (d) and 40
10 C.F.R. § 300.6, that are identified in the ROD as modified by the
11 ESD and Subpart F of this Section.

12 2. If any new requirement(s) are promulgated or any
13 requirement(s) promulgated on or before January 31, 1991 are
14 changed at any time after this Consent Decree is signed, EPA
15 shall determine (pursuant to 40 C.F.R. § 300.430(f)(1)(ii)(b)(1))
16 whether or not the requirements(s) are (a) applicable or relevant
17 and appropriate, and (b) necessary to ensure that the remedy is
18 protective of human health and the environment. For any
19 requirement(s) that EPA determines meet both criteria, EPA will
20 seek to negotiate with Settling Defendants to amend the Consent
21 Decree (including the Statement of Work) to ensure that the Work
22 will comply with the new or changed requirement(s). However, in
23 signing this Consent Decree, Settling Defendants have not agreed
24 to meet any such new or changed requirement(s). EPA reserves the
25 right to stop performance of the Work if Settling Defendants do
26 not agree to meet such new or changed requirement(s). If EPA
27 stops the Work pursuant to this Section, Lockheed and the City

1 shall not be deemed to have violated the Consent Decree for
2 failure to perform the Work. Lockheed and the City shall also
3 not be entitled to a Covenant Not To Sue for any Work performed
4 prior to the date that EPA stopped performance of the Work pur-
5 suant to this Section. Nothing in this Section shall preclude
6 the United States from instituting proceedings in this action or
7 a new action or issuing an order pursuant to Subpart D of Section
8 XVIII (Covenant Not To Sue), seeking to compel the Settling
9 Defendants to meet the new or changed requirement(s).

10 N. The City may, at its sole option, monitor the treated
11 groundwater received at the Point of Delivery. In performing any
12 such monitoring, the City shall comply with the requirements of
13 Section VIII (Quality Assurance).

14 O. If EPA decides to operate and maintain the extraction,
15 treatment and reinjection facilities constructed pursuant to Sub-
16 part A of this Section after the Work required by this Decree is
17 completed, or to have a person(s) other than Lockheed or EPA do
18 so, Lockheed shall cooperate with EPA and/or the other person(s)
19 with respect to the continuing operation of such facilities.
20 Such cooperation shall include, but not be limited to: (1)
21 training personnel in plant operation and maintenance; (2)
22 providing necessary technical information; (3) reviewing and com-
23 menting on operating plans and procedures; (4) providing access
24 to the plant and any related facilities (including reinjection
25 facilities); and (5) maintaining and providing copies of the
26 groundwater Treatment Plant design specifications, daily log,
27 repair log, operation manuals, and any other records or documents

1 prepared by Lockheed related to the facilities. Lockheed's
2 obligations pursuant to this Subpart shall not include an obliga-
3 tion to pay any
4 Future Response Costs incurred by the United States during the
5 period of cooperation.

6 P. All Remedial Design Work to be performed by Settling
7 Work Defendants pursuant to this Consent Decree shall be under
8 the direction and supervision of (a) qualified professional
9 architect(s)/engineer(s). Settling Work Defendants may use one
10 qualified professional architect/engineer, or each may select its
11 own architect/engineer, to direct and supervise that portion of
12 the Remedial Design Work to be performed by it. At least ten
13 (10) days prior to the initiation of the Remedial Design Work,
14 Settling Work Defendants shall notify EPA in writing of the name,
15 title, and qualifications of the architect(s)/engineer(s)
16 proposed to supervise and direct the Remedial Design Work to be
17 performed by it pursuant to this Consent Decree. Selection of
18 any such architect(s)/engineer(s) shall be subject to disapproval
19 by EPA. If at any time after making their selection(s), (a) Set-
20 tling Work Defendant(s) propose(s) to change (a) professional
21 architect(s)/engineer(s) directing and supervising Remedial
22 Design Work, the Settling Work Defendant(s) shall give written
23 notice to EPA. Any such change shall be subject to disapproval
24 by EPA. If EPA disapproves of an architect/engineer proposed by
25 (a) Settling Work Defendant(s) pursuant to this Subpart, EPA
26 shall state in writing the reasons for such disapproval.

1 Q. All Remedial Action Work to be performed by Settling
2 Work Defendants pursuant to this Consent Decree shall be under
3 the direction and supervision of (a) qualified professional
4 engineer(s). Settling Work Defendants may use one qualified
5 professional engineer, or each may select its own engineer, to
6 direct and supervise that portion of the Remedial Action Work to
7 be performed by it pursuant to this Consent Decree. At least
8 thirty (30) days prior to the initiation of Remedial Action Work
9 at the Site, (a) Settling Work Defendant(s) shall notify EPA in
10 writing of the name, title, and qualifications of the proposed
11 engineer(s), and the names of the principal contractors and/or
12 subcontractors (including laboratories) proposed to be used in
13 carrying out the Remedial Action Work to be performed pursuant to
14 this Consent Decree. Selection of any such engineer, contractor,
15 or subcontractor shall be subject to disapproval by EPA. If at
16 any time thereafter (a) Settling Work Defendant(s) propose(s) to
17 change professional engineers directing and supervising Remedial
18 Action Work, the Settling Work Defendant(s) shall give written
19 notice to EPA. Any such change shall be subject to disapproval
20 by EPA. If EPA disapproves of an engineer proposed by (a) Set-
21 tling Work Defendant(s) pursuant to this Subpart, EPA shall state
22 in writing the reasons for such disapproval.

23 R. The Statement of Work shall not be amended without the
24 mutual written agreement of the Settling Work Defendant(s) af-
25 fected by the modification and EPA, as provided for in Section

1 XXIV (Modification). This limitation on amending the Statement
2 of Work shall not act to limit EPA's rights pursuant to Subpart B
3 of Section XVII (Reservation and Waiver of Rights).

4 S. Documents to be submitted:

5 1. Deliverables: Each Settling Work Defendant shall
6 prepare and submit those deliverables which that Settling Work
7 Defendant is required to submit by the Statement of Work, as that
8 document may be from time to time amended in accordance with Sec-
9 tion XXIV (Modification).

10 2. Monthly Progress Reports: Each Settling Work
11 Defendant shall provide written progress reports to EPA on a
12 monthly basis. These progress reports shall describe the actions
13 taken by that Settling Work Defendant to comply with this Consent
14 Decree, including a general description of activities commenced
15 or completed during the reporting period, Remedial Action Work
16 activities projected to be commenced or completed during the next
17 reporting period, any significant problems that have been encoun-
18 tered or are anticipated by that Settling Work Defendant in per-
19 forming the Work activities and that Settling Work Defendant's
20 recommended solutions, and the results of any sampling, tests, or
21 other data required by the Decree (including the Statement of
22 Work). Analytical sampling results shall be reported within the
23 time periods specified in Section XI (Submission of Documents,
24 Sampling and Analytic Data). Each Settling Work Defendant shall
25 include any data required by the Decree (including the Statement
26 of Work) other than analytical sampling results in the Monthly
27 Progress Report for the month immediately following the month in

1 which that Settling Work Defendant or its representatives genera-
2 ted or acquired such data. These progress reports shall also in-
3 clude any specific information which the Statement of Work re-
4 quires be included in them. These progress reports shall be sub-
5 mitted to EPA by the 10th day of each month for Work done the
6 preceding month and planned for the current month.

7 3. Quarterly Quality Assurance Reports: The Settling
8 Work Defendants shall each include a quality assurance report to
9 EPA as part of its monthly reports for the months of January,
10 April, July and October of each year. Such reports shall contain
11 information that demonstrates that Settling Work Defendant's com-
12 pliance with Section VIII (Quality Assurance), including but not
13 limited to any specific information which the Statement of Work
14 required be included in them.

15 T. Settling Work Defendants shall submit a draft and a
16 final of each of the deliverables they are required to submit
17 (except the monthly progress reports and the quarterly quality
18 assurance reports). Any failure by Settling Work Defendants to
19 submit a draft or final deliverable in compliance with the
20 schedule set forth in the Statement of Work shall be deemed a
21 violation of this Decree.

22 U. EPA shall review any deliverable Settling Work Defen-
23 dants are required to submit for approval and shall: (1) ap-
24 prove, in whole or in part, the deliverable; (2) disapprove, in
25 whole or in part, the deliverable, notifying the submitting Set-
26 tling Work Defendant of the deficiencies; (3) direct the Settling
27 Work Defendant that submitted the deliverable to modify the

1 deliverable; (4) approve the deliverable with specified condi-
2 tions; (5) modify the deliverable to cure the deficiencies; or
3 (6) any combination of the above; provided, however, that EPA
4 may not use this review and approval process to expand the Work
5 beyond that which each Settling Work Defendant has agreed to per-
6 form pursuant to this Decree.

7 V. In the event of approval, approval upon conditions, or
8 modification by EPA, Settling Work Defendants shall proceed to
9 take any action required by the deliverable, as approved or
10 modified by EPA, subject only to Settling Work Defendants' right
11 to invoke dispute resolution pursuant to Section XX (Dispute
12 Resolution).

13 W. Upon receipt of a notice of disapproval or a notice re-
14 quiring a modification, the Settling Work Defendant that sub-
15 mitted the deliverable shall, within ten (10) working days or
16 such other longer period of time as specified by EPA in such
17 notice, correct the deficiencies and resubmit the deliverable for
18 approval. Notwithstanding the notice of disapproval, the Set-
19 tling Work Defendant shall proceed, at the direction of EPA, to
20 take any action required by the non-deficient portion of the
21 deliverable. Implementation of non-deficient portions of a
22 deliverable shall not relieve a Settling Work Defendant of its
23 liability pursuant to Section XIX (Stipulated Penalties) for
24 stipulated penalties for submitting a deficient deliverable.

25 X. If, upon resubmission, a deliverable or portion thereof
26 is still deficient, the Settling Work Defendant that submitted
27 the deliverable shall be deemed to be in violation of this Con-

1 sent Decree. If a resubmitted deliverable is disapproved by EPA,
2 EPA may again take any of the actions described in Subpart U of
3 this Section.

4 Y. Settling Work Defendants acknowledge and agree that
5 neither this Consent Decree nor any approvals or permits issued
6 by EPA or any other government entity shall be deemed a warranty
7 or representation, either express or implied, by the United
8 States that the activities thereby approved will result in
9 achievement of the performance standards which this Decree re-
10 quires Settling Work Defendants to meet. EPA has exercised its
11 best efforts to include in the Statement of Work all activities
12 necessary to fulfill the requirements of the Remedial Design Work
13 and the Remedial Action Work. However, the Settling Parties ac-
14 knowledge and agree that nothing in this Consent Decree
15 (including the Statement of Work) or any deliverables submitted
16 pursuant thereto constitutes a warranty or representation, either
17 express or implied, by the United States that compliance with the
18 Statement of Work and/or any deliverables approved by EPA will
19 result in achievement of the performance standards that this
20 Decree requires the Settling Work Defendants to meet, and that
21 such compliance shall not foreclose the United States from seek-
22 ing compliance with all terms and conditions of this Decree in-
23 cluding, but not limited to, the performance standards of this
24 Section.

25 Z. EPA Performance of the Work: In the event that EPA
26 determines that a Settling Work Defendant fails to perform, in an
27 adequate or timely manner, the Work it is required to perform

1 pursuant to this Decree, EPA may elect to perform a portion or
2 all of the Work which that Settling Work Defendant is required to
3 perform pursuant to this Decree, as EPA determines necessary.
4 Except as is necessary to address an imminent and substantial en-
5 dangerment to human health or the environment, EPA shall provide
6 Settling Work Defendants with ten (10) days written notice of its
7 intent to perform a portion or all of the Work. In the notice,
8 EPA shall also describe the alleged deficiency.

9 AA. If the Settling Work Defendant required to perform the
10 Work which EPA is taking over disagrees with EPA's determination
11 that that Settling Work Defendant has failed to perform, in an
12 adequate and timely manner, the Work it is required to perform by
13 this Decree and that Settling Work Defendant desires to dispute
14 EPA's determination in this regard, that Settling Work Defendant
15 shall invoke the dispute resolution provisions of Section XX
16 (Dispute Resolution) within thirty (30) days of receiving written
17 notice of EPA's intent. Invocation of dispute resolution shall
18 not divest EPA of its right to perform the Work during the dis-
19 pute. Upon receipt of notification that EPA intends to take over
20 the performance of a portion or all of the Work, that Settling
21 Work Defendant's obligation to perform such Work pursuant to this
22 Decree shall terminate. If EPA elects to perform the Work which
23 a Settling Work Defendant is required to perform pursuant to this
24 Decree, that Settling Work Defendant shall pay a Work Assumption
25 Penalty as provided in Subpart I of Section XIX (Stipulated
26 Penalties) and all other obligations of that Settling Work Defen-
27 dant to pay stipulated penalties for any portion of the Work

1 taken over by EPA shall be terminated upon receipt of EPA's
2 notice, except that payment of the Work Assumption penalty shall
3 be in addition to any stipulated penalties which accrued prior to
4 that Settling Work Defendant's receipt of EPA's notice of intent
5 to take over all or a portion of the Work. A takeover of Work by
6 EPA shall not affect Lockheed's obligation to pay Future Response
7 Costs pursuant to Section XVI (Reimbursement of Future Response
8 Costs).

9 VIII. QUALITY ASSURANCE

10 A. Each Settling Work Defendant shall submit to EPA for ap-
11 proval, in accordance with the schedule contained in the State-
12 ment of Work, comprehensive Quality Assurance ("QA") Project
13 Plan(s) for all Work to be performed by that Settling Work Defen-
14 dant pursuant to this Decree. The QA Project Plan(s) shall,
15 where applicable, be prepared in accordance with U.S. EPA Interim
16 Guidelines & Specifications for Preparing QA Project Plans -
17 QAMS 055/80 (U.S. EPA December 1980) and U.S. EPA Region IX
18 Guidance for Preparing QA Project Plans for Superfund Remedial
19 Projects, Doc. 90A-03-82 (September, 1989), and any superseding
20 or amended version of these documents provided by EPA to the Set-
21 tling Work Defendants. Upon receipt of EPA's approval of each
22 Final QA Project Plan, the Settling Work Defendant that submitted
23 the plan shall immediately implement the QA Project Plan.

24 B. Settling Work Defendants shall use QA procedures and
25 protocols in accordance with the QA Project Plan(s) approved pur-
26 suant to Subpart A of this Section, and shall utilize standard
27 EPA sample chain of custody procedures, as documented in the Na-

1 tional Enforcement Investigations Center Policies and Procedures
2 Manual as revised in May 1986 and any amended or superseding ver-
3 sion of this document provided by EPA to the Settling Work Defen-
4 dants, and the National Enforcement Investigations Center Manual
5 for the Evidence Audit, published in September 1981 and any
6 amended or superseding version of this document provided by EPA
7 to the Settling Work Defendants, for all sample collection and
8 analysis activities conducted pursuant to this Decree.

9 C. In order to provide quality assurance and maintain
10 quality control regarding all samples collected pursuant to this
11 Decree, each Settling Work Defendant shall:

12 1. Ensure that all contracts with laboratories utilized by
13 that Settling Work Defendant for analysis of samples taken pur-
14 suant to this Consent Decree provide for access of EPA personnel
15 and EPA-authorized representatives to assure the accuracy of
16 laboratory results obtained pursuant to this Decree.

17 2. Ensure that all laboratories utilized by that Settling
18 Work Defendant for analysis of samples taken pursuant to this
19 Consent Decree perform all analyses according to the approved QA
20 Project Plan(s).

21 3. Ensure that all laboratories utilized by that Settling
22 Work Defendant for analysis of samples taken pursuant to this
23 Decree participate in an EPA or EPA-equivalent Laboratory Water
24 Supply Performance Evaluation Study. As part of the QA program
25 and upon request by EPA, such laboratories shall perform, at that
26 Settling Work Defendant's expense, analyses of samples provided
27

1 by EPA to demonstrate the quality of each laboratory's data. EPA
2 may provide to each laboratory a maximum of ten (10) samples per
3 year per analytical combination.

4 4. Ensure that all laboratories utilized by that Settling
5 Work Defendant for analysis of samples taken pursuant to this
6 Decree follow EPA procedures in order for data validation to be
7 accomplished as outlined in U.S. EPA Region IX, Laboratory
8 Documentation Requirements for Data Validation (January, 1990),
9 the Laboratory Data Validation Functional Guidelines for Evaluat-
10 ing Inorganic Analysis, Draft (July, 1988), the Laboratory Data
11 Validation Functional Guidelines for Evaluating Organic Analysis,
12 Draft (February, 1988) and any amended or superseding version of
13 these documents provided by EPA to that Settling Work Defendant.

14 5. Agree not to contest EPA's authority to conduct field
15 audits to verify compliance by that Settling Work Defendant with
16 the requirements of this Section.

17 D. Each Settling Work Defendant shall require by contract
18 and use its best reasonable efforts to ensure that samples taken
19 on that Settling Work Defendant's behalf for purposes of im-
20 plementing this Decree are retained and disposed of by analytical
21 laboratories in accordance with EPA's customary contract proce-
22 dures for sample retention, as outlined in the Contract
23 Laboratory Project Statement of Work for Organics (October,
24 1986), Contract Laboratory Project Statement of Work for Inor-
25 ganics (July 1987) and any amendments to or superseding versions
26 of these documents provided by EPA to that Settling Work Defen-
27 dant. If a laboratory fails to retain and dispose of samples as

1 required by its contract with a Settling Work Defendant, EPA and
2 that Settling Work Defendant shall confer to determine whether
3 the laboratory should continue to perform analytical work re-
4 quired by this Consent Decree. At EPA's written request stating
5 the reasons therefor, the Settling Work Defendant shall discon-
6 tinue use of the laboratory.

7 E. Notwithstanding the other Subparts of this Section, the
8 City may substitute other quality assurance procedures for some
9 or all of the procedures required by this Section if EPA issues a
10 written determination to both Settling Work Defendants that such
11 other procedures and the supporting documentation generated by
12 the City are sufficiently similar to the requirements of this
13 Section and any related reporting requirements for which such
14 procedures and reporting requirements would be substituted that
15 EPA is satisfied with such procedures as a substitute for some or
16 all of the requirements of this Section and related reporting re-
17 quirements. If at any time after issuing such a determination
18 EPA decides that the City should again comply with all of the
19 procedures of this Section, the City shall do so within thirty
20 (30) days of receipt of EPA's written determination to this ef-
21 fect, containing the reasons for EPA's decision.

22 IX. PROJECT COORDINATORS

23 A. Within fifteen days of the effective date of this
24 Decree, EPA, Lockheed and the City shall each designate a Project
25 coordinator to monitor the progress of the Work and to coordinate
26 communication among the Settling Parties.
27

1 B. EPA's Project Coordinator will be an EPA employee and
2 shall have the authority vested in the On-Scene Coordinator by 40
3 C.F.R. § 300 et seq., including such authority as may be added by
4 amendments to 40 C.F.R. Part 300. EPA's Project Coordinator
5 shall have the authority, inter alia, to require cessation of the
6 performance of the Remedial Action Work or any other activity at
7 the Site that, in the opinion of EPA's Project Coordinator, may
8 present or contribute to an endangerment to public health, wel-
9 fare, or the environment or cause or threaten to cause the
10 release of hazardous substances from the Site. In the event that
11 the EPA Project Coordinator suspends the Remedial Action Work of
12 a Settling Work Defendant or any other activity at the Site, the
13 EPA shall extend the schedule for that Settling Work Defendant's
14 Remedial Action Work for the amount of time necessary to allow
15 completion of any of that Settling Work Defendant's Remedial Ac-
16 tion Work affected by such delay, provided that the original
17 reason for the suspension was not due primarily to the acts or
18 omissions of that Settling Work Defendant or its representatives.
19 If EPA suspends the Remedial Action Work of one Settling Work
20 Defendant and such suspension affects the Remedial Action Work of
21 the second Settling Work Defendant, EPA shall extend the schedule
22 for the second Settling Work Defendant's Remedial Action Work for
23 the amount of time necessary to allow completion of any of that
24 Settling Work Defendant's Remedial Action Work affected by such
25 delay, provided that the original reason for the suspension was
26 not due primarily to the acts or omissions of the second Settling
27 Work Defendant or its representatives.

1 C. If a Settling Work Defendant disagrees with EPA's deter-
2 mination regarding the appropriateness of or the amount of time
3 necessary for any extension authorized pursuant to Subpart B of
4 this Section, that Settling Work Defendant may invoke the dispute
5 resolution procedures of Section XX (Dispute Resolution).

6 D. The absence of EPA's Project Coordinator from the Site
7 shall not be cause for stoppage of the Work.

8 E. A Settling Work Defendant or EPA may change its Project
9 Coordinator by notifying the other Settling Parties in writing at
10 least seven days prior to the change.

11 F. Each Settling Work Defendant's Project Coordinator may
12 assign another representative, including a contractor, to serve
13 as a Site representative for oversight of that Settling Work
14 Defendant's daily operations during performance of the Work.

15 G. EPA's Project Coordinator may assign another representa-
16 tive, including another EPA employee or contractor, to serve as a
17 Site representative for oversight of daily operations during per-
18 formance of the Work. Such representative shall not have the
19 powers of the Project Coordinator to require a cessation of the
20 performance of the Remedial Action Work or any other activity at
21 the Site unless such representative is also an EPA employee with
22 the authority vested in the On-Scene Coordinator by 40 C.F.R. §
23 300 et seq. and amendments thereto.

24 X. SITE ACCESS

25 A. To the extent that Lockheed requires access to or ease-
26 ments over property (other than property it owns or controls or
27 to which it is provided access pursuant to this Decree) for the

1 proper and complete performance of the Work, Lockheed shall use
2 its best reasonable efforts to obtain access agreements from the
3 owners or those persons who have control of such property. For
4 purposes of this paragraph, "best reasonable efforts" shall in-
5 clude the payment of reasonable sums of money in consideration of
6 access. Lockheed shall obtain the required access agreements by
7 the following time periods:

8 1. For access needed by Lockheed prior to the start of
9 remedial construction, access agreements shall be obtained by a
10 date fifty (50) days prior to the date access is needed.

11 2. For access needed by Lockheed for remedial construction,
12 access agreements shall be obtained at least fifty (50) days
13 prior to the start of remedial construction.

14 3. If EPA identifies to Lockheed in writing additional ac-
15 cess (beyond that access previously secured) which is required
16 for the proper and complete performance by Lockheed of its re-
17 quirements under this Decree, access agreements shall be obtained
18 within fifty (50) days of EPA providing such identification in
19 writing.

20 B. To the extent that the City requires access to or ease-
21 ments over property (other than property it owns or controls or
22 to which it is provided access pursuant to this Decree) for the
23 proper and complete performance of the Work, the City shall use
24 its best reasonable efforts to obtain access agreements from the
25 owners or those persons who have control of such property. For
26 purposes of this paragraph, "best reasonable efforts" shall in-
27

1 clude the payment of reasonable sums of money in consideration of
2 access. The City shall obtain the required access agreements by
3 the following time periods:

4 1. For access needed by the City prior to the start of
5 remedial construction, access agreements shall be obtained by a
6 date fifty (50) days prior to the date access is needed.

7 2. For access needed by the City for remedial construction,
8 access agreements shall be obtained at least fifty (50) days
9 prior to the start of remedial construction.

10 3. If EPA identifies to the City in writing additional ac-
11 cess (beyond that access previously secured) which is required
12 for the proper and complete performance by the City of its re-
13 quirements under this Decree, access agreements shall be obtained
14 within fifty (50) days of EPA providing such identification in
15 writing. In the event the City acquires property pursuant to
16 this Subpart, which acquisition is necessary for the purpose of
17 conducting remedial action, the City shall be entitled to the
18 protection granted by Section 104(j)(3) of CERCLA, 42 U.S.C. §
19 9604(j)(3).

20 C. In the event that a Settling Work Defendant is unable to
21 obtain an access agreement within the time periods specified in
22 Subpart A or B of this Section, the Settling Work Defendant re-
23 quired to obtain such an agreement shall notify EPA regarding the
24 lack of such agreements within five (5) days after the end of the
25 period specified for the attainment of such access agreements in
26 Subpart A or B of this Section and shall include in that
27 notification a summary of the steps which that Settling Work

1 Defendant has taken to attempt to obtain access. Inability to
2 obtain a required access agreement, if the Settling Work Defen-
3 dant used its best reasonable efforts to obtain such agreement
4 and has otherwise complied with the requirements of this Section,
5 shall constitute a force majeure event and shall be subject to
6 the provisions of Section XXI (Force Majeure). If the United
7 States must obtain access on behalf of Settling Work Defendants,
8 any costs incurred in obtaining such access (including but not
9 limited to attorneys' fees and other legal costs) shall be
10 treated as Future Response Costs to be reimbursed by Lockheed as
11 provided in Section XVI (Reimbursement of Future Response Costs).

12 D. All Site access agreements to be obtained pursuant to
13 this Section shall provide reasonable access to the Settling Work
14 Defendant obtaining access, the United States and any of its
15 agencies, the State of California, and the representatives of
16 each of the foregoing, including contractors.

17 E. During the effective period of this Decree, the United
18 States, the State, and their representatives, including contrac-
19 tors, shall have access, free of charge, to any property at the
20 Site and any property contiguous to the Site owned or controlled
21 by any Settling Defendant for any activity authorized by this
22 Consent Decree, including but not limited to:

- 23 1. Monitoring the progress of the Work activities;
- 24 2. Verifying any data or information submitted by
- 25 either Settling Work Defendant to EPA or the State;
- 26 3. Conducting investigations relating to contamina-
- 27 tion at or near the Site;

1 4. Obtaining samples at the Site;

2 5. Inspecting and copying records or other documents
3 available pursuant to Section XI (Submission of Documents, Sam-
4 pling and Analysis);

5 6. Performing the Work if EPA takes over any part of
6 the Work pursuant to Subpart AA of Section VII (Work To Be
7 Performed); and

8 7. Performing any of the tasks described in Subpart B of
9 Section VII (Work To Be Performed).

10 F.1. Lockheed and Weber shall also provide access free of
11 charge, consistent with any applicable government security re-
12 quirements that are uniformly applied to all persons on the
13 premises, to property either or both own(s) or control(s) to the
14 Settling Work Defendants and the representatives of the Settling
15 Work Defendants to the extent that such access is necessary for a
16 Settling Work Defendant to perform the Remedial Design Work or
17 Remedial Action Work. If either Settling Work Defendant seeks
18 access pursuant to this Subpart and such access is refused, that
19 Settling Work Defendant shall, within five days of such refusal,
20 inform EPA in writing of the reasons it desires the access, the
21 attempts it has made to obtain access and the impact a denial of
22 access would have upon its ability to perform its obligations un-
23 der this Decree, including any deadlines that might be affected.

24 2. The City shall provide, free of charge to any other Set-
25 tling Party, an area at the Valley Forebay Facility located at
26 2030 North Hollywood Way, for the groundwater Treatment Plant,
27 subject to area availability after excluding the area necessary

1 for the blending, booster and disinfection facilities. The total
2 available area for all such facilities is shown in Appendix F
3 ("Area F"). The City shall provide Area F free of all structures
4 or personal property other than existing utility structures. The
5 City shall also provide, free of charge to any other Settling
6 Party, access from the City's public right of way to Area F for
7 pipelines, utilities and related facilities (exclusive of the
8 groundwater Treatment Plant, blending, booster and disinfection
9 facilities, and monitoring or extraction wells). Lockheed shall
10 be solely responsible for obtaining permission from nonparties
11 that is needed to relocate any overhead or underground utility
12 structures above or under the surface of Area F necessary to con-
13 struct any facilities, including the groundwater Treatment Plant,
14 to be constructed by Lockheed. Lockheed shall be solely respon-
15 sible for relocating any such utility structures. The City
16 shall also require, at the request of Lockheed, that any holder
17 of an easement or franchise for a facility in Area F relocate
18 such facility, provided that such relocation can be accomplished,
19 pursuant to such easement or franchise, without cost to the City.

20 3. The City shall provide access free of charge to public
21 rights of way it owns or controls within the City (i.e., streets,
22 median strips, gutters, curbs, sidewalks) to Lockheed to the ex-
23 tent such access is necessary for Lockheed to perform its portion
24 of the Remedial Design Work or Remedial Action Work. If Lockheed
25 seeks access pursuant to this Subpart and such access is refused,
26 Lockheed shall, within five days of such refusal, inform EPA in
27 writing of the reasons it desires the access, the attempts it has

made to obtain access and the impact a denial of access would have upon its ability to perform its obligations under this Decree, including any deadlines that might be affected. The City shall also require, at the request of Lockheed, that any holder of an easement or franchise for a facility in the public right of way relocate such facility, provided that such relocation can be accomplished, pursuant to such easement or franchise, without cost to the City. Nothing in this Subpart shall interfere with the City's rights pursuant to Subpart E.2 of Section VI (Binding Effect).

4. Settling Defendants shall also provide access, as described in Subparts F.2 or F.3 of this Section, respectively, free of charge to property they own or control to any other potentially responsible party (including Lockheed) that is responsible (pursuant to an EPA order or a consent decree with EPA) for performing any of the tasks described in Subpart B of Section VII (Work To Be Performed) of this Decree; provided, however, that the Settling Defendants do not agree to provide such access voluntarily without a signed agreement with such other potentially responsible party (including Lockheed), containing terms substantively similar to those to which the Settling Defendants have agreed in Subparts G and H of this Section, but covering the tasks described in Subpart B of Section VII (Work To Be Performed). The access required to be provided pursuant to this Subpart shall be that access reasonably necessary

to enable any such potentially responsible party and its representatives to perform any of the tasks described in Subpart B of Section VII (Work To Be Performed) of this Decree.

G. Lockheed, Weber and the City do hereby agree to relieve, release, indemnify, defend, hold harmless and forever discharge the others and the others' respective officers, agents, employees, attorneys, administrators, affiliates, parents, subsidiaries, assigns, representatives, servants, insurers, successors, heirs and each of them, of and from any and all claims, rights, debts, liabilities, demands, obligations, liens, promises, acts, agreements, costs and expenses (including, but not limited to, attorneys' fees and costs), damages, actions and causes of action, of whatever kind or nature, (including without limitation, any statutory, civil or administrative claim), whether known or unknown, suspected or unsuspected, fixed or contingent, apparent or concealed, in any way based on, arising out of or related to or connected with its acts or omissions or the acts or omissions of its officers, agents, employees, attorneys, administrators, affiliates, parents, subsidiaries, assigns, representatives, servants, insurers, successors, heirs and each of them, in connection with or related to the performance of any Work.

H. Each Settling Defendant performing Work on the property of another Settling Defendant shall carry liability insurance in the amount of \$5,000,000.00 (Five Million Dollars) for the benefit of the owner, and occupant (if any), of the property on which the Work is being performed.

1 I. The access and information gathering abilities provided
2 pursuant to this Section are in addition to, and not in lieu of,
3 any rights of access and information gathering granted to EPA and
4 its employees, officers, and representatives by statute.

5 J. Any person obtaining access pursuant to this Section
6 shall comply with all applicable provisions of the Worker Health
7 and Safety Plan(s) described in the Statement of Work.

8 XI. SUBMISSION OF DOCUMENTS, SAMPLING AND ANALYTIC DATA

9 A. Each Settling Work Defendant shall submit to EPA the
10 results of all sampling, and/or tests or other analytic data gen-
11 erated by that Settling Work Defendant or on its behalf, with
12 respect to the implementation of this Consent Decree, in a sum-
13 mary form in the monthly progress reports described in Section
14 VII (Work To Be Performed).

15 B. Upon a written request to a Settling Work Defendant's
16 Project Coordinator by EPA's Project Coordinator at least four-
17 teen days prior to a sampling event, that Settling Work Defendant
18 shall provide EPA with a split or duplicate sample of any sample
19 taken for purposes of implementing this Decree by that Settling
20 Work Defendant or anyone acting on its behalf. The United States
21 shall, pursuant to CERCLA Section 104, 42 U.S.C. § 9604, have the
22 right to take any samples it deems necessary, including split
23 samples of samples taken by Settling Work Defendants or anyone
24 acting on Settling Work Defendants' behalf.

25 C. During the performance of the Work, each Settling Work
26 Defendant shall notify EPA's Project Coordinator of any planned
27 sampling to be conducted by that Settling Work Defendant or

1 anyone acting on its behalf with respect to implementation of the
2 Consent Decree in the monthly progress report submitted prior to
3 the sampling. Such notice shall provide at least fourteen (14)
4 days notice of planned sampling to EPA unless otherwise agreed
5 upon in writing. EPA shall be notified sixty (60) days prior to
6 the disposal of any sample taken as part of the performance of
7 the Work and shall have an opportunity to take possession of all
8 or a portion of any such sample; provided, however, that such op-
9 portunity to take possession and the requirement of notification
10 of disposal shall not apply to any continuous line monitoring or
11 to any monitoring for VOCs.

12 D. Upon request, each Settling Work Defendant shall
13 provide to EPA any analytical, technical or design data that are
14 generated by or on behalf of that Settling Work Defendant in the
15 course of performing the Work at the Site. Such information
16 shall be provided to EPA within fifteen (15) days of a request by
17 EPA if such information is in the possession of that Settling
18 Work Defendant. If such information is under that Settling Work
19 Defendant's control but not in its possession at the time of the
20 request, such technical and design data shall be provided to EPA
21 within thirty (30) days of the request and such analytical data
22 shall be provided to EPA within sixty (60) days of the request.
23 The Settling Parties recognize that the provisions of Section
24 104(e)(7)(F) of CERCLA apply to information generated by Settling
25 Defendants with respect to the hazardous substances at the Site.

26
27

1 E. Upon written request by a Settling Work Defendant's
2 Project Coordinator to EPA at least fourteen (14) days prior to a
3 sampling event, EPA will provide to that Settling Work Defendant
4 a split or duplicate sample of any sample collected by EPA or on
5 its behalf for purposes of implementing this Consent Decree and
6 the analytical results obtained from the sample. If EPA collects
7 any samples pursuant to the Statement of Work or undertakes any
8 other Work pursuant to the Statement of Work, EPA will attempt to
9 notify the Settling Work Defendants' Project Coordinators at
10 least fourteen (14) days in advance and permit Settling Work
11 Defendants or their representatives to observe such Work;
12 provided, however, that any failure by EPA to notify Settling
13 Work Defendants pursuant to this Subpart shall not be deemed a
14 violation of this Decree.

15 F. Each Settling Work Defendant reserves the right to
16 assert that documents and other information that it submits to
17 EPA are entitled to confidential treatment pursuant to Section
18 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7). For each such
19 claim, the Settling Work Defendant submitting the information
20 shall clearly mark each document as confidential and provide each
21 such document to EPA. Any such claims shall be subject to EPA's
22 confidentiality determination procedure pursuant to 40 C.F.R.
23 Part 2. If a Settling Work Defendant does not make a confiden-
24 tiality claim pursuant to CERCLA Section 104(e)(7), 42 U.S.C. §
25 9604(e)(7), at the time it submits information to EPA, such in-
26 formation may be made available to the public without any notice
27 to the Settling Work Defendant.

1 G. The information gathering abilities provided pursuant to
2 this Section are in addition to, and not in lieu of, any rights
3 of information gathering granted to EPA by statute.

4 H.1. Lockheed shall provide the following data to the City
5 at the same time that Lockheed is required to provide such infor-
6 mation to EPA:

7 a. Analytical sampling results received by Lockheed or
8 its representatives on extraction wells supplying water to the
9 groundwater Treatment Plant;

10 b. Analytical sampling results on groundwater Treat-
11 ment Plant influent, effluent and internal intermediate processes
12 taken by Lockheed or its representatives.

13 2. Lockheed shall provide the following information to the
14 City within sixty (60) days of receipt of a written request from
15 the City:

16 a. All groundwater Treatment Plant operating logs and
17 summary management reports;

18 b. All reports and study results generated by Lockheed
19 or its representatives pertaining to groundwater Treatment Plant
20 efficiency or operations;

21 c. Any other information that Lockheed is required to
22 submit to EPA pursuant to this Section for which Lockheed does
23 not claim confidentiality pursuant to Section 104(e)(7), 42
24 U.S.C. § 9604(e)(7).
25
26
27

1 I.1. The City shall provide to Lockheed, at the same time
2 that the City is required to provide such information to EPA,
3 analytical sampling results on blending facility influents, ef-
4 fluent and internal intermediate processes taken by the City or
5 its representatives.

6 2. The City shall provide to Lockheed, within sixty (60)
7 days of a written request from Lockheed, any other information
8 that the City is required to submit to EPA pursuant to this Sec-
9 tion for which the City does not claim confidentiality pursuant
10 to Section 104(e)(7), 42 U.S.C. § 9604(e)(7).

11 3. Twenty days after the end of each month in which the
12 City draws upon the Lockheed Trust Fund account established pur-
13 suant to Subpart H of Section XII (Financial Assurance and Trust
14 Accounts), the City shall provide to Lockheed copies of the con-
15 tractor invoices and documentation of internal expenses for any
16 costs incurred by the City during the prior month which the draw
17 from the Lockheed Trust Fund was intended to reimburse.

18 XII. FINANCIAL ASSURANCE AND TRUST ACCOUNTS

19 A.1. Subject to the provisions of Subpart C of this Sec-
20 tion, Lockheed shall demonstrate its ability to complete the Work
21 and to pay all costs, penalties and interest for which Lockheed
22 is or may become responsible under this Decree by obtaining, and
23 presenting to EPA for approval within thirty (30) days after the
24 effective date of this Decree, one of the following items for the
25 amount of \$54,000,000.00:

- 26 a. Performance bond,
- 27 b. Letter of credit, or

1 c. Guarantee by a third party.

2 2. After Lockheed has been operating phase one for 18
3 months, or on the date that EPA approves Lockheed's Remedial Ac-
4 tion Work Plan for phase two, whichever is later, Lockheed may
5 reduce the financial assurance provided pursuant to this Section
6 to the amount of \$37,000,000.00.

7 3. After Lockheed has been operating phase two for 18
8 months, or on the date that EPA approves Lockheed's Remedial Ac-
9 tion Work Plan for phase three, whichever is later, Lockheed may
10 reduce the financial assurance provided pursuant to this Section
11 to the amount of \$23,000,000.00.

12 4. For purposes of this Section, "operation" of any phase
13 shall be deemed to begin on the System Operation Date.

14 B. EPA may disapprove the financial assurance mechanism
15 presented if, in EPA's determination, it does not provide ade-
16 quate assurance that Lockheed is able to complete the Work. If
17 Lockheed seeks to demonstrate its ability to complete the Work
18 through a guarantee by a third party pursuant to Subpart A.3 of
19 this Section, Lockheed shall demonstrate that the guarantor
20 passes the financial test specified in 40 C.F.R. § 265.143(e).
21 In determining whether or not such third party satisfies the
22 criteria in 40 C.F.R. § 265.143(e), the amount required in Sub-
23 part A of this Section shall be used in place of "the sum of the
24 current closure and post-closure cost estimates and the current
25 plugging and abandonment cost estimates," referred to in 40
26 C.F.R. § 265.143(e).

1 C. In lieu of any of the three items listed in Subpart A
2 above, Lockheed may present, for EPA's review and approval, in-
3 ternal or public financial information sufficient to satisfy EPA
4 that Lockheed has sufficient assets to make additional assurances
5 unnecessary. EPA shall approve such financial assurance if EPA
6 determines, based on the information submitted, that Lockheed has
7 met the criteria in 40 C.F.R. § 265.143(e). In determining
8 whether or not Lockheed has met these criteria, the amount re-
9 quired in Subpart A of this Section shall be used in place of
10 "the sum of the current closure and post-closure cost estimates
11 and the current plugging and abandonment cost estimates," as
12 referred to in 40 C.F.R. § 265.143(e). If Lockheed relies on in-
13 ternal or public financial information for financial assurance,
14 Lockheed shall submit such information on an annual basis until
15 this Consent Decree is terminated pursuant to Section XXXIV
16 (Termination and Satisfaction). If EPA determines the financial
17 assurances to be inadequate based on its review of Lockheed's
18 initial submittal or on review of any annual submittal, Lockheed
19 shall obtain one of the three other financial instruments listed
20 above in Subpart A of this Section, within thirty (30) days of
21 receiving notice of such determination. If Lockheed disputes a
22 determination by EPA that any financial assurance provided pur-
23 suant to this Subpart C is inadequate, Lockheed shall maintain
24 one of the three financial instruments listed in Subpart A during
25 the pendency of the dispute.

1 D. Within sixty (60) days of the effective date of this
2 Consent Decree, Weber shall establish a trust fund (the "Weber
3 Trust Fund") in the amount of Three Million Seven Hundred and
4 Fifty Thousand Dollars (\$3,750,000.00). The instrument estab-
5 lishing the Weber Trust Fund (the "Weber trust agreement") shall
6 provide that Lockheed may draw upon the amount in the Weber Trust
7 Fund to pay costs incurred in performing the Work that Lockheed
8 has agreed to perform pursuant to Section VII (Work To Be
9 Performed); provided, however, that if EPA takes over such Work,
10 Lockheed may no longer draw upon the Weber Trust Fund and EPA
11 may, instead, draw upon any amounts remaining in the Weber Trust
12 Fund to reimburse the Superfund for amounts incurred in perform-
13 ing such Work. Weber shall bear all costs related to the estab-
14 lishment and maintenance of the Weber Trust Fund; provided,
15 however, that Weber may use interest earned on the Weber Trust
16 Fund to pay maintenance fees related to the Weber Trust Fund.
17 Any additional interest shall be included in the Weber Trust Fund
18 and drawn upon for performance of the Work by Lockheed or EPA.

19 E. Weber shall submit a signed copy of the Weber trust
20 agreement to EPA and Lockheed within sixty-five (65) days of the
21 effective date of the Consent Decree.

22 F. The Weber trust agreement shall require the trustee to
23 provide a statement of the Weber Trust Fund account to EPA, Weber
24 and Lockheed on the following schedule. The trustee shall submit
25 its initial statement by the tenth day of the first calendar
26 month after the first month in which either Lockheed or EPA draws
27 upon the Weber Trust Fund. A statement shall be submitted to

1 EPA, Weber and Lockheed on the tenth day of the first calendar
2 month after each month in which either Lockheed or EPA draws upon
3 the Weber Trust Fund.

4 G. This Decree does not require Weber to perform any of the
5 Work described in Section VII (Work To Be Performed), including
6 any additions or changes to such Work. Pursuant to this Decree,
7 Weber's sole responsibility for funding such Work is the obliga-
8 tion to establish and fund the Weber Trust Fund described in Sub-
9 parts D through F of this Section. The establishment and funding
10 of such Weber Trust Fund shall entitle Weber to the covenant not
11 to sue under Subpart A.2 of Section XVIII (Covenant Not To Sue).

12 H. Within sixty (60) days of the effective date of this
13 Decree, Lockheed shall establish a trust fund (the "Lockheed
14 Trust Fund" in the amount of Two Hundred Thousand Dollars
15 (\$200,000.00). The instrument establishing the Lockheed Trust
16 Fund (the "Lockheed trust agreement") shall provide that, upon
17 submission to the trustee of an invoice with supporting documen-
18 tation, the City may draw upon the amount in the Lockheed Trust
19 Fund (up to \$200,000.00) to pay only those costs incurred by the
20 City in designing and constructing the facilities necessary to
21 transport treated groundwater from the Point of Delivery to the
22 Valley Forebay Facility and necessary structural modifications
23 and diffuser piping; provided, however, that if EPA takes over
24 such Work, the City may no longer draw upon the Lockheed Trust
25 Fund and EPA may, instead, draw upon any amounts remaining in the
26 Lockheed Trust Fund (up to a total of \$200,00.00 drawn by the
27 City and EPA) to reimburse the Superfund for amounts incurred in

1 performing such Work. Lockheed shall bear all costs related to
2 the establishment and maintenance of the Lockheed Trust Fund and
3 receive any interest that accrues pursuant to the Lockheed trust
4 agreement.

5 I. Lockheed shall submit a signed copy of the Lockheed
6 trust agreement to EPA and the City within sixty-five (65) days
7 of the effective date of this Consent Decree.

8 J. The Lockheed trust agreement shall require the trustee
9 to provide a statement of the Lockheed Trust Fund account to the
10 City, Lockheed and EPA on the following schedule. The trustee
11 shall submit its initial statement by the tenth day of the first
12 calendar month after the first month in which either the City or
13 EPA draws upon the Lockheed Trust Fund. A statement shall be
14 submitted to EPA, the City and Lockheed on the tenth day of the
15 first calendar month after each month in which either the City or
16 EPA draws upon the Lockheed Trust Fund. The Lockheed Trust Fund
17 shall be terminated upon EPA's approval of the City's Interim
18 Remedial Action Report, as defined in the Statement of Work. If
19 any portion of the \$200,000.00 principal remains in the Lockheed
20 Trust Fund at the time of termination, such amount shall be
21 returned to Lockheed.

22 XIII. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

23 A. All actions required to be taken pursuant to this Con-
24 sent Decree shall be undertaken in accordance with the require-
25 ments of all applicable local, state and federal laws and regula-
26 tions, including CERCLA, as amended, and in accordance with the
27 NCP, as amended, and the ROD (as modified by the ESD and Subpart

1 P of Section VII (Work To Be Performed)). Except as provided in
2 Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), Lockheed
3 shall obtain or cause its contractors to obtain all permits and
4 approvals necessary under such laws and regulations for the Work
5 it is required to perform. The City shall obtain or cause its
6 contractors to obtain all permits and approvals necessary under
7 such laws and regulations for the Work it is required to perform.

8 B. Each Settling Work Defendant shall include in all con-
9 tracts or subcontracts into which it enters for the Work, provi-
10 sions stating that the contractors or subcontractors, including
11 their agents and employees, shall perform all activities required
12 by such contracts or subcontracts in compliance with all ap-
13 plicable laws and regulations.

14 C. This Consent Decree is not, nor shall it act as, nor is
15 it intended by the Settling Parties to be, a permit issued pur-
16 suant to any federal, state, or local statute or regulation.

17 D. All permits or other approvals required for the perfor-
18 mance of the Work, including permits for any offsite disposal of
19 hazardous substances, shall be identified in each Settling Work
20 Defendant's Plan(s) for Satisfaction of Permitting Requirements,
21 Final Remedial Design Report(s), and Final Remedial Action Work
22 Plan(s), which are described in the Statement of Work.

23 E. Settling Work Defendants shall dispose of any materials
24 taken off the Site in compliance with all applicable provisions
25 of EPA's Revised Procedures for Implementing Off-Site Response
26 Actions ("Off-Site Policy") (EPA OSWER Directive, 9834.11, Novem-
27 ber 13, 1987).

1 XIV. RETENTION OF RECORDS

2 A. Each Settling Work Defendant shall preserve and retain
3 and shall instruct its contractors, subcontractors, and anyone
4 else acting on its behalf to preserve and retain all records and
5 documents (in the form of originals or exact copies or, in the
6 alternative, in micrographic storage of all originals) in their
7 possession or control developed in the course of performing the
8 Remedial Action Work regardless of any document retention policy
9 to the contrary, for five (5) years after certification of
10 completion of the Work pursuant to Section XXXIV (Termination and
11 Satisfaction). However, at any time during this five-year
12 period, a Settling Work Defendant may deliver to the EPA Project
13 Coordinator originals or copies of all non-privileged records and
14 documents that it is required to preserve and retain under this
15 Subpart A and thereby absolve itself of any further respon-
16 sibility to preserve and retain such non-privileged records and
17 documents. The obligation to preserve and retain any allegedly
18 privileged documents shall remain until the end of the five (5)
19 year period.

20 B. If a Settling Work Defendant asserts a privilege with
21 respect to any document requested by EPA, it shall, upon request
22 by EPA, provide an identification of such document by date,
23 addressee(s) and addressor(s) and the basis for asserting
24 privilege within twenty (20) days of the request by EPA. Set-
25 tling Work Defendants may assert any privilege recognized by
26 federal law. If a Settling Work Defendant decides to deliver to
27 EPA all non-privileged documents pursuant to Subpart A of this

1 Section, that Settling Work Defendant shall also provide to EPA
2 at that time a list of all documents which it is required to
3 preserve and retain pursuant to Subpart A but which it is not
4 turning over based on a claim of privilege. At EPA's request,
5 that Settling Work Defendant shall identify each such document by
6 date, addressee(s), and addressor(s) and shall provide the basis
7 for asserting a privilege within twenty (20) days of the request
8 by EPA. A Settling Work Defendant may assert any privilege
9 recognized by federal law. If EPA disagrees with a Settling Work
10 Defendant's characterization of a document as privileged, EPA may
11 request that that Settling Work Defendant produce the document.
12 The Settling Work Defendant(s) shall either comply with such re-
13 quest or invoke the dispute resolution procedures of Section XX
14 (Dispute Resolution).

15 XV. REIMBURSEMENT OF PAST COSTS

16 A. In full and complete settlement of Lockheed's liability
17 to the United States for all Past Response Costs incurred by the
18 United States with respect to the Site, Lockheed shall reimburse
19 the Superfund in the amount of \$1,958,929.72. Lockheed shall,
20 within thirty (30) days of the effective date of this Consent
21 Decree, remit a certified or cashiers check for such amount to
22 the address listed below:

23 U.S. Environmental Protection Agency, Region IX
24 Superfund Accounting
25 P. O. Box 360863M
Pittsburgh, PA 15251
26 Attention: Collection Officer for Superfund
27

1 B. Lockheed shall send a transmittal letter with the check
2 described in Subpart A of this Section. The transmittal letter
3 shall contain Lockheed's complete and correct address, the
4 Operable Unit name, and the civil action number. Lockheed shall
5 also state in the transmittal letter that \$124,307.44 of the
6 funds are to be applied to site spill identifier ("SSID") #L6 and
7 \$1,834,622.28 of the funds are to be applied to SSID #59.
8 Lockheed shall send a copy of the transmittal letter and a copy
9 of the check to the United States Department of Justice at the
10 address indicated in Section XXIII (Form of Notice). Lockheed
11 shall also send a copy of the check and a copy of the transmittal
12 letter to the EPA Project Coordinator and the EPA Assistant
13 Regional Counsel at the addresses listed in Section XXIII (Form
14 of Notice). If Lockheed does not reimburse the Superfund in the
15 amount specified in Subpart A of this Section within thirty (30)
16 days of the effective date of this Consent Decree, then interest
17 on the unpaid amount shall begin to accrue thirty (30) days after
18 the effective date of this Consent Decree, at the rate specified
19 in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

20 XVI. REIMBURSEMENT OF FUTURE RESPONSE COSTS

21 A. Lockheed agrees to reimburse the United States for any
22 Future Response Costs which the United States (1) incurs in con-
23 nection with the Site prior to the termination of this Consent
24 Decree pursuant to Section XXXIV (Termination and Satisfaction)
25 and (2) submits to Lockheed for payment pursuant to this Section.
26 After this Decree becomes effective, EPA shall submit to
27 Lockheed, no more frequently than annually, documentation of Fu-

ture Response Costs incurred by the United States; provided, however, that failure to include all such costs in the submittal during any particular calendar year will not preclude EPA from submitting such costs in any subsequent year. Lockheed does not agree to pay interest on any costs except as specifically provided for in this Decree.

B. Interest at the rate specified in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), shall accrue on any unpaid Future Response Costs beginning thirty (30) days after Lockheed's receipt of EPA documentation with respect to such costs. Lockheed agrees to reimburse the United States for Future Response Costs and any interest due within sixty (60) days of receipt of the documentation for such costs. EPA's documentation with respect to such costs shall consist of (1) an Agency Financial Management System Summary report ("SPUR") or an equivalent report, and (2) to the extent that they are not included in such SPUR or equivalent report (a) a summary of EPA's indirect and interest cost calculations and (b) a summary of costs incurred by the Department of Justice; provided, however, that EPA is not required to include in such documentation any interest cost calculation for interest which may accrue after Lockheed's receipt of the documentation. EPA shall also state in a cover letter what specific amount of the Future Response Costs in its annual submittal corresponds to each SSID number.

C. Payments shall be made by certified check for the amount of costs demanded made payable to the "EPA-Hazardous Substances Superfund." Two separate checks shall be sent if Future Response

Costs under both SSID #L6 and SSID #59 are included in EPA's documentation. With each check, Lockheed shall send a transmittal letter which shall include the correct name and address of Lockheed, the applicable site spill identifier number (SSID #L6 or #59, as identified in EPA's cover letter), the Operable Unit name, and the civil action number. A copy of each such check and a copy of the transmittal letter shall be sent to the EPA Project Coordinator and to the United States Department of Justice, at the addresses set forth in Section XXIII (Form of Notice).

D. Checks should specifically reference the identity of the Site and be sent to:

U.S. Environmental Protection Agency
Region IX
Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251
Attention: Collection Officer for Superfund

E. Payments made pursuant to this Section or Section XV (Reimbursement of Past Costs) shall not constitute an admission by Lockheed of any liability to the United States or any other person or entity.

XVII. RESERVATION AND WAIVER OF RIGHTS

A. The United States reserves the right to take any enforcement action pursuant to CERCLA and/or any other legal authority, including the right to seek injunctive relief, monetary penalties, and punitive damages, for any civil or criminal violation of law or this Consent Decree, except that the United States agrees not to seek more than \$25,000 per day per violation in civil penalties, including stipulated penalties.

1 Except as specifically waived in this Decree, Settling Defen-
2 dants reserve all defenses to any such enforcement action by EPA.
3 Notwithstanding compliance with the terms of this Consent Decree,
4 including completion of the Work, Lockheed is not released from
5 liability for any matters other than Covered Matters and Weber
6 and the City are not released from liability for any matters
7 other than Covered Matters and the tasks described in Subpart B
8 of Section VII (Work To Be Performed).

9 B. Subject to the dispute resolution provisions of Section
10 XX (Dispute Resolution), the United States reserves the right to
11 disapprove of Work performed by a Settling Work Defendant that is
12 not in compliance with this Consent Decree. Subject to the dis-
13 pute resolution provisions of Section XX (Dispute Resolution),
14 the United States also reserves the right to compel a Settling
15 Work Defendant pursuant to this Decree to perform tasks in addi-
16 tion to those detailed in the Statement of Work if such tasks are
17 necessary to meet the requirements that Section VII (Work To Be
18 Performed) imposes upon that Settling Work Defendant.

19 C. The United States reserves the right to undertake
20 remedial design and remedial actions, including operation and
21 maintenance activities (including any operation and maintenance
22 activities which are not part of the Work), at any time and to
23 seek to recover all costs of those actions from Settling Defen-
24 dants; provided, however, that the United States agrees not to
25 attempt to recover the costs of performing the tasks described in
26 Subpart B of Section VII (Work To Be Performed) from the City if
27 the City is in full compliance with the terms of this Decree or

1 from Weber if Weber is in full compliance with the terms of this
2 Decree. The United States agrees not to undertake any part of
3 the Work unless (1) the Settling Work Defendant responsible for
4 that part of the Work fails to perform in an adequate and timely
5 manner any Work for which it is responsible or (2) EPA, pursuant
6 to Subpart D of Section XVIII (Covenant Not To Sue), determines
7 that performance of any additional remedial action tasks related
8 to the Work (including identification of a new or changed ap-
9 plicable or relevant and appropriate requirement pursuant to Sub-
10 part M.2 of Section VII (Work To Be Performed)) are required and
11 Settling Defendants do not agree to perform these additional
12 tasks.

13 D.1. The Settling Parties recognize and acknowledge that
14 the settlement embodied in this Consent Decree may result only in
15 a partial remediation of conditions at the Site and will result
16 only in partial implementation of the ROD (as modified by the ESD
17 and Subpart F of Section VII (Work To Be Performed)). The Set-
18 tling Defendants hereby waive the defenses of res judicata, col-
19 lateral estoppel, and claim-splitting against the United States,
20 but only with respect to the United States' right to pursue sub-
21 sequent action regarding Settling Defendants' responsibility to
22 pay for or perform response actions with respect to groundwater
23 and soil contamination in the San Fernando Valley; provided,
24 however, that this waiver shall not affect the enforceability of
25 the covenants not to sue set forth in Section XVIII (Covenant Not
26 To Sue). The United States hereby retains all of its information
27 gathering and inspection rights and authorities under CERCLA, the

1 Resource Conservation and Recovery Act ("RCRA"), and any other
2 applicable statute or regulation. Except as specifically
3 provided in Section XVIII (Covenant Not To Sue) and Subpart C of
4 this Section, EPA hereby reserves the right to take any addi-
5 tional response actions, including any enforcement action, pur-
6 suant to CERCLA, RCRA, and any other applicable statute or
7 regulation (including the right to take enforcement action seek-
8 ing to have Settling Defendants pay response costs for or perform
9 any response actions that are not Covered Matters (including any
10 tasks necessary to implement the ROD, as modified by the ESD and
11 Subpart F of Section VII (Work To Be Performed), that are not
12 part of the Work).

13 2. The Settling Parties recognize that this Decree does not
14 cover all of the tasks necessary to implement the ROD (as
15 modified by the ESD and Subpart F of Section VII)). EPA
16 presently intends to seek to have these additional tasks per-
17 formed through enforcement actions or judicial settlements with
18 potentially responsible parties ("PRPs"). These PRPs may include
19 the Settling Defendants, pursuant to the reservation of EPA's en-
20 forcement authority in Subparts C and/or D of this Section;
21 provided, however, that the United States agrees not to take an
22 enforcement action for the performance of or to recover the costs
23 of the tasks described in Subpart B of Section VII (Work To Be
24 Performed) against the City if the City is in full compliance
25 with the terms of this Decree or against Weber if Weber is in
26 full compliance with the terms of this Decree.

1 E. Settling Defendants reserve any and all defenses or
2 rights they may have with respect to any actions concerning the
3 Site, including any enforcement action by EPA pursuant to Subpart
4 D of this Section, except any rights expressly waived in this
5 Decree. Settling Defendants retain any and all rights, claims,
6 remedies and defenses that they have or may have against any per-
7 son, or entity, including potentially responsible parties, not
8 expressly waived in this Decree, including any rights, claims,
9 remedies and defenses they may have as against each other. This
10 reservation shall not affect each Settling Defendant's obligation
11 to perform its obligations under this Decree, and shall not af-
12 fect EPA's ability to assess stipulated penalties in accordance
13 with Section XIX (Stipulated Penalties).

14 F. Settling Defendants waive any rights they might have to
15 challenge the United States' or the Court's authority to issue,
16 enter into or enforce this Decree.

17 G. Settling Defendants waive any claims for damages or
18 reimbursement from the United States, or for set-off of any pay-
19 ments made or to be made to the United States, arising from or on
20 account of any contract, agreement, or arrangement between
21 Lockheed and/or the City and any person for performance of the
22 Work on or relating to the Site, including claims on account of
23 construction delays; provided, however, that nothing in this Con-
24 sent Decree shall be interpreted as waiving, abrogating or
25 resolving (1) any claims which any Settling Defendant has or may
26 have based upon any alleged liability which the United States
27 Department of Defense, any branch or division thereof, or any

1 predecessor agency has or may have for conditions at the Site
2 pursuant to CERCLA Sections 106, 107, 113, 120 or 310, 42 U.S.C.
3 §§ 9606, 9607, 9613, 9620, or 9659 or the Resource Conservation
4 and Recovery Act ("RCRA") Section 7002, 42 U.S.C. § 6972 or (2)
5 any claims which Lockheed or Weber have or may have with respect
6 to the Site pursuant to any contract between Lockheed or Weber
7 and the United States or between Lockheed or Weber and any
8 government contractor(s). In agreeing to this reservation the
9 United States does not admit liability for any such claims and
10 expressly reserves any and all defenses it may have to any such
11 claims. Nothing in this Consent Decree shall be interpreted as
12 waiving, abrogating or resolving any rights or claims which
13 Lockheed or Weber may have against the United States based upon
14 any contract between Lockheed or Weber and the United States or
15 between Lockheed or Weber and any government contractor(s).

16 H. Settling Defendants waive any rights they might other-
17 wise have to initiate a challenge to the amount of stipulated
18 penalties due per type of violation as set out in Subpart D or E
19 of Section XIX (Stipulated Penalties) of this Decree. This
20 waiver does not including a waiver of the right to dispute the
21 underlying technical or schedule issues that may have given rise
22 to the alleged penalties or whether the penalties allegedly due
23 were calculated in the manner provided for in this Decree.

24 I. The Settling Parties recognize that as a result of the
25 withdrawal of groundwater from the San Fernando Valley Basin
26 during the performance of the Remedial Action Work, certain
27 obligations to provide replacement water or to pay money in place

1 of providing such water will arise, pursuant to the final judg-
2 ment entered in The City of Los Angeles v. The City of San Fer-
3 nando, et. al., (Los Angeles Superior Court, Case No C650079,
4 1979). The Settling Parties agree that the City is responsible
5 for meeting any such obligations to provide replacement water or
6 to pay money in place of providing such water which arise under
7 such judgment as a result of performance of the Remedial Action
8 Work except that Lockheed is responsible for meeting any such
9 obligations which arise under such judgment in connection with
10 any water extracted pursuant to this Decree that the City is not
11 required to accept at the Point of Delivery.

12 XVIII. COVENANT NOT TO SUE

13 A. 1. Except as provided in Subparts C, D, E and F of this
14 Section, upon approval by EPA of the Certificate of Completion
15 with respect to the Work pursuant to Subpart A of Section XXXIV
16 (Termination and Satisfaction), the United States covenants not
17 to sue the Settling Work Defendants with regard to Covered Mat-
18 ters. This Section is not, and shall not be construed as, a
19 covenant not to sue either Settling Work Defendant if either or
20 both Settling Work Defendant(s) do(es) not make all payments and
21 perform all Work which Settling Work Defendants are required to
22 make or perform by this Consent Decree. Neither Settling Work
23 Defendant is entitled to a covenant not to sue if the other Set-
24 tling Work Defendant fails to perform its obligations pursuant to
25 this Decree. This covenant not to sue does not apply to any
26 removal or remedial actions taken at the Site beyond those that
27 are included in Covered Matters.

1 2. Except as provided in Subparts C, D, and E of this Sec-
2 tion, upon fulfillment of Weber's obligations pursuant to Sub-
3 parts D through F of Section XII (Financial Assurance and Trust
4 Account), the United States covenants not to sue Weber with
5 respect to Covered Matters and not to sue Weber to attempt to
6 have Weber perform the tasks described in Subpart B of Section
7 VII (Work To Be Performed) if Weber is in full compliance with
8 the terms of this Decree.

9 3. Except as provided in Subparts C, D, E and F of this
10 Section, upon entry of this Decree, the United States covenants
11 not to sue the City to attempt to have the City perform the tasks
12 described in Subpart B of Section VII (Work To Be Performed) if
13 the City is in full compliance with the terms of this Decree.

14 B. Settling Defendants hereby release and covenant not to
15 sue the United States for any claim, counter-claim, or cross-
16 claim asserted, or that could have been asserted up to and in-
17 cluding the effective date of this Consent Decree related to or
18 arising from this Consent Decree or groundwater contamination at
19 the Site; provided, however, that nothing in this Consent Decree
20 shall be interpreted as waiving, abrogating or resolving (1) any
21 claims which any Settling Defendant has or may have based upon
22 any alleged liability which the United States Department of
23 Defense, any branch or division thereof, or any predecessor
24 agency has or may have for conditions at the Site pursuant to
25 CERCLA Sections 106, 107, 113, 120 or 310, 42 U.S.C. §§ 9606,
26 9607, 9613, 9620 or 9659 or RCRA Section 7002, 42 U.S.C. § 6972
27 or (2) any claims which Lockheed or Weber has or may have with

1 respect to the Site from the United States pursuant to any con-
2 tract between Lockheed or Weber and the United States or between
3 Lockheed or Weber and any government contractor(s). In agreeing
4 to this reservation the United States does not admit liability on
5 any such claims and expressly reserves any and all defenses that
6 it may have to any such claims. Except as expressly set forth in
7 this Decree, Settling Defendants do not waive any claim against
8 and do not release or covenant not to sue the United States with
9 respect to any matter.

10 C. Settling Defendants are expressly not released from, and
11 the provisions of Subpart A of this Section shall not apply to,
12 any matter not expressly addressed by this Consent Decree, in-
13 cluding, but not limited to the following claims:

14 1. Claims based on a failure of a Settling Defendant
15 to meet the requirements of this Decree;

16 2. Any other claims of the United States for any other
17 costs or actions necessary at the Site which are not Covered
18 Matters, including any remedial activities that are necessary to
19 implement the ROD (as modified by the ESD and Subpart F of Sec-
20 tion VII (Work To Be Performed)), other than the Work, except in-
21 sofar as Weber and the City are entitled to a covenant not to
22 sue, pursuant to Subpart A of this Section, for the tasks
23 described in Subpart B of Section VII (Work To Be Performed);

24 3. Claims based on liability of Lockheed, Weber and/or
25 the City arising from the past, present, or future disposal of
26 hazardous substances outside of the Site;

27

- 1 4. Any claim or demand for damage to federal property
2 located any place that the Work is being performed;
3 5. Claims based on criminal liability;
4 6. Claims based on liability for damage to natural
5 resources as defined in CERCLA;
6 7. Claims based on liability for hazardous substances
7 removed from the Site;
8 8. Claims for Future Response Costs (and interest
9 thereon) that become due and payable pursuant to Section XVI
10 (Reimbursement of Future Response Costs) of this Consent Decree,
11 but which Lockheed does not pay by the date any such amounts are
12 due;
13 9. Claims based on liability for future monitoring,
14 oversight, or other response costs incurred by the United States
15 except as those expenses are Covered Matters; or
16 10. Liability for any violations of federal or State
17 law which occur during performance of the Work.
18 D. Notwithstanding any other provisions of this Consent
19 Decree, the United States reserves the right to institute
20 proceedings in this action, or in a new action, or to issue an
21 Order seeking to compel Lockheed and/or the City and/or Weber to
22 perform the following tasks with respect to Covered Matters:
23 1. Perform any additional response work, including
24 changes in the Work, at or related to the Site; or
25
26
27

- 1 2. Reimburse the United States for response costs and
2 reimburse the State for its matching share of any response ac-
3 tions undertaken under CERCLA with respect to Covered Matters,
4 relating to the Site, if:
5 a. for proceedings prior to EPA certification of
6 completion of the Work pursuant to Section XXXIV (Termination and
7 Satisfaction),
8 i. conditions at the Site, previously un-
9 known to the United States, are discovered after the entry of
10 this Decree, or
11 ii. information is received, in whole or in
12 part, after entry of this Decree, and these previously unknown
13 conditions or this information indicates that the Remedial Action
14 previously selected by EPA is not protective of human health and
15 the environment;
16 b. for proceedings subsequent to EPA certification of
17 completion of the Work pursuant to Section XXXIV (Termination and
18 Satisfaction),
19 i. conditions at the Site, previously un-
20 known to the United States, are discovered after the certifica-
21 tion of completion by EPA, or
22 ii. information is received, in whole or in
23 part, after the certification of completion by EPA, and these
24 previously unknown conditions or this information indicates that
25 the Remedial Action previously selected by EPA is not protective
26 of human health and the environment.
27

1 E.1.a. The reservation contained in Subpart D of this Sec-
2 tion pertains only to additional tasks related to the Work. The
3 United States does not have to meet the standards contained in
4 Subpart D to seek to have Lockheed perform additional tasks that
5 are excluded from the definition of the Work. Lockheed retains
6 any and all defenses to an action by EPA to have Lockheed perform
7 additional tasks not required by this Decree except those
8 defenses waived in Subpart D.1 of Section XVII (Reservation and
9 Waiver of Rights).

10 b. The reservation contained in Subpart D of this Section
11 pertains only to additional tasks related to the Work. The
12 United States does not have to meet the standards contained in
13 Subpart D to seek to have Weber perform additional tasks that are
14 excluded from the definition of the Work; provided, however, that
15 EPA agrees not to seek to have Weber perform the tasks described
16 in Subpart B of Section VII if Weber has a covenant not to sue
17 for those tasks, pursuant to Subpart A.2 of this Section. Weber
18 retains any and all defenses to an action by EPA to have Weber
19 perform additional tasks not required by this Decree except those
20 defenses waived in Subpart D.1 of Section XVII (Reservation and
21 Waiver of Rights).

22 c. The reservation contained in Subpart D of this Section
23 pertains only to additional tasks related to the Work. The
24 United States does not have to meet the standards contained in
25 Subpart D to seek to have the City perform additional tasks that
26 are excluded from the definition of the Work; provided, however,
27 that EPA agrees not to seek to have the City perform the tasks

1 described in Subpart B of Section VII if the City has a covenant
2 not to sue for those tasks, pursuant to Subpart A.3 of this Sec-
3 tion. The City retains any and all defenses to an action by EPA
4 to have the City perform additional tasks not required by this
5 Decree except those defenses waived in Subpart D.1 of Section
6 XVII (Reservation and Waiver of Rights).

7 2. If the United States institutes proceedings in this ac-
8 tion or in a new action or issues an order pursuant to the reser-
9 vation contained in Subpart D of this Section, each Settling
10 Defendant reserves any and all defenses it may have to any por-
11 tion of such action or order that requires a Settling Defendant
12 to perform tasks in addition to any portion of the Work which
13 that Settling Defendant agreed to perform in Section VII (Work To
14 Be Performed) of this Decree.

15 F. Notwithstanding any other provision in this Consent
16 Decree, this covenant not to sue shall not relieve Settling
17 Defendants of their obligations to meet and maintain compliance
18 with the requirements set forth in this Consent Decree. The
19 United States reserves all its rights to take response actions at
20 the Site with respect to the Work in the event that EPA deter-
21 mines that a Settling Work Defendant has failed to perform, in an
22 adequate and timely manner, the Work it is required to perform
23 pursuant to this Decree, and to seek to recover from that Set-
24 tling Work Defendant response costs which:

- 25 1. Result from such a breach of the Decree;
26 2. Relate to any portion of the Work funded or per-
27 - formed by the United States; or

1 3. Are enforcement costs incurred by the United States
2 associated with the Site.

3 G. Nothing in this Consent Decree shall constitute or be
4 construed as a release from, or a covenant not to sue regarding,
5 any claim, cause of action, or demand in law or equity against
6 any person, firm, trust, joint venture, partnership, corporation
7 or other entity not a signatory to this Consent Decree for any
8 liability it may have arising out of or relating to the Site.

9 H. The Settling Parties agree that the United States shall
10 be under no obligation to assist Settling Defendants in any way
11 in defending against suits for contribution brought against Set-
12 tling Defendants, including any which allege liability for mat-
13 ters covered by this covenant not to sue.

14 XIX. STIPULATED PENALTIES

15 A.1. Unless excused by EPA or a force majeure event,
16 Lockheed shall be liable for stipulated penalties to the United
17 States, as set forth in Subpart D of this Section, for each
18 failure by Lockheed to comply with the requirements of this Con-
19 sent Decree. Lockheed shall not be liable for stipulated
20 penalties for failure to meet requirements that are solely the
21 obligation of the City pursuant to this Decree.

22 2. Unless excused by EPA or a force majeure event, the City
23 shall be liable for stipulated penalties to the United States, as
24 set forth in Subpart E of this Section, for each failure by the
25 City to comply with the requirements of this Consent Decree. The
26
27

1 City shall not be liable for stipulated penalties for failure to
2 meet requirements that are solely the obligation of Lockheed pur-
3 suant to this Decree.

4 B.1. Any reports, plans, specifications, schedules,
5 deliverables, appendices, and attachments required by this Decree
6 or the Statement of Work, are, upon approval by EPA, incorporated
7 into this Decree. A failure by a Settling Work Defendant to
8 comply with applicable EPA-approved reports, plans, specifica-
9 tions, schedules, deliverables, appendices, or attachments shall
10 be considered a failure to comply with this Decree and shall sub-
11 ject that Settling Work Defendant to stipulated penalties as
12 provided in Subpart D or E of this Section.

13 2. Failure to comply with this Consent Decree shall also
14 include but is not limited to the following:

15 a. Failure to submit deliverables specified in this
16 Consent Decree or the Statement of Work in an acceptable manner
17 and by the date due pursuant to this Decree; provided, however,
18 that if the failure to comply results from a determination by EPA
19 that a written deliverable is inadequate, the Settling Work
20 Defendant required to submit the draft deliverable shall have ten
21 (10) working days from receipt of EPA's written notice of disap-
22 proval, or such other longer time period as provided by EPA in
23 the notice of disapproval, within which to correct the inadequacy
24 and resubmit the deliverable for approval. Any disapproval by
25 EPA shall include an explanation of why the deliverable is inade-
26
27

1 quate. If the resubmitted deliverable is inadequate, the Set-
2 tling Work Defendant required to submit the deliverable shall be
3 deemed to be in violation of this Decree.

4 b. Failure by a Settling Work Defendant to use best
5 efforts to obtain any permits necessary for offsite Work which
6 that Settling Work Defendant is required to perform or failure by
7 a Settling Work Defendant to use best reasonable efforts to ob-
8 tain necessary access agreements.

9 c. Failure to comply with any permit obtained for the
10 purpose of implementing the requirements of this Consent Decree
11 in any offsite location.

12 C. Stipulated penalties for failure to perform any require-
13 ment of this Consent Decree for which a deadline is specified
14 shall begin to accrue on the first day after the deadline.
15 Stipulated penalties for any other violation of this Consent
16 Decree shall begin to accrue on the first day after the Settling
17 Work Defendant(s) subject to penalties receive(s) notice from EPA
18 of such violation. For any violation, stipulated penalties shall
19 continue to accrue up to and including the day on which the non-
20 compliance is corrected. EPA, in its sole discretion, may waive
21 or reduce stipulated penalties. If EPA does not waive stipulated
22 penalties, EPA shall provide the Settling Work Defendant(s) sub-
23 ject to penalties with written notice of the alleged deficiency
24 in compliance with this Decree, and accrued stipulated penalties
25 shall become payable thirty (30) days after Settling Work
26 Defendant's receipt of EPA's written notice of deficiency;
27 provided, however, that if EPA provides notice of an alleged

1 deficiency, and that deficiency continues, EPA shall not be re-
2 quired to provide any additional notice in order for stipulated
3 penalties to continue to accrue and become payable.

4 D. With respect to Lockheed, stipulated penalties shall ac-
5 crue in the following amounts, and, as provided in Subpart H of
6 Section XVII (Reservation and Waiver of Rights), Lockheed may not
7 dispute the amount of stipulated penalties due per type of viola-
8 tion:

9 1. Monthly Progress Reports and Quarterly Quality Assurance
10 Reports

11 (a). Lockheed shall pay a stipulated penalty of \$1,000 per
12 day for the submission of a late or deficient Monthly Progress
13 Report.

14 (b) Lockheed shall pay a stipulated penalty of \$1,000 per
15 day for the submission of a late or deficient Quarterly Quality
16 Assurance Report.

17 2. MCL Effluent Violations

18 (a). At any time after the first sixty (60) days after the
19 System Operation Date for each phase, if the concentration of TCE
20 in the treated water is greater than 5.0 ppb, Lockheed shall be
21 considered to have been out of compliance for each day for which
22 the representative treated water sample (as defined in Subpart
23 J.1 of Section VII (Work to Be Performed)) indicates that the
24 concentration of TCE was greater than 5.0. ppb. Lockheed shall
25 be subject to stipulated penalties in the amount of \$5,000 per
26 day for each such day of noncompliance.

1 (b). At any time after the first sixty (60) days after the
2 System Operation Date for each phase, if the concentration of PCE
3 in the treated water is greater than 5.0 ppb, Lockheed shall be
4 considered to have been out of compliance for each day for which
5 the representative treated water sample (as defined in Subpart
6 J.1 of Section VII (Work To Be Performed)) indicates that the
7 concentration of PCE was greater than 5.0 ppb. Lockheed shall be
8 subject to stipulated penalties in the amount of \$5,000 per day
9 for each such day of noncompliance.

10 (c) At any time after the first sixty (60) days after the
11 System Operation Date for each phase, if the concentration of a
12 volatile organic compound ("VOC") other than TCE or PCE in the
13 treated water is greater than the MCL in effect at that time for
14 such VOC, Lockheed shall be considered to have been out of com-
15 pliance for each day for which the representative treated water
16 sample (as defined in Subpart J.1 of Section VII (Work To Be
17 Performed)) indicates that the concentration of that VOC was
18 greater than the MCL in effect, provided that the MCL in effect
19 was promulgated on or before January 31, 1991. Lockheed shall be
20 subject to stipulated penalties in the amount of \$5,000 per day
21 for each such day of noncompliance.

22 (d) At any time after the first sixty (60) days after an
23 analytical sample result shows that the concentration of a con-
24 taminant in the treated water other than a VOC or nitrate is
25 greater than the MCL in effect at that time for such contaminant,
26 Lockheed shall be considered to have been out of compliance for
27 each day for which the representative treated water sample (as

1 defined in Subpart J.1 of Section VII (Work To Be Performed)) in-
2 dicates that the concentration of that contaminant was greater
3 than the MCL in effect, provided that the MCL in effect was
4 promulgated on or before January 31, 1991. Lockheed shall be
5 subject to stipulated penalties in the amount of \$3,000 per day
6 for each such day of noncompliance.

7 3. Class I Violations

8 <u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
9 Days 1 - 5	\$1,000
10 Days 6 - 30	\$2,500
11 After 30 Days	\$5,000

12 (a) Each failure to comply in a timely and adequate manner
13 with the terms of this Consent Decree, including the Statement of
14 Work, and any documents incorporated into this Decree pursuant to
15 this Decree, that are not specifically listed as a violation
16 anywhere else under Subparts D.1 or D.2 of this Section or under
17 this Class I or under Classes II or III, and specifically includ-
18 ing any failure to comply with the substantive standards of any
19 applicable or relevant and appropriate requirement identified in
20 the ROD (as modified by the ESD and Subpart F of Section VII
21 (Work To Be Performed)) not identified as a violation under Sub-
22 parts D.1 or D.2 of this Section or under Class II or Class III,
23 provided that Lockheed shall not be subjected to stipulated
24 penalties for any requirement of this Decree that is solely the
25 obligation of the City pursuant to this Decree.

26 (b). Failure to submit any of the following:
27 1. Draft Conceptual Design Report(s)

- 1 ii. Draft Pre-Final Design Report(s)
- 2 iii. Draft Remedial Action Work Plan(s)
- 3 iv. Draft Remedial Design Work Plan(s)
- 4 v. Draft Preliminary Sampling Plan
- 5 vi. Draft Interim Remedial Action Report(s)
- 6 vii. Notification of Selection of RD
Architect/Engineer
- 8 viii. Notification of Selection of RA Engineer
- 9 ix. Notification of Selection of RA
Contractors/Subcontractors
- 11 x. Draft Plan(s) for Satisfaction of Permit
Requirements
- 13 ix. Draft QA Project Plan(s)
- 14 x. Draft Operational Sampling Plan(s)
- 15 xi. Draft Operation and Maintenance Plan(s)
- 16 xii. Notification of Selection of Independent
Quality Assurance Team
- 18 (c) Each violation of the following:
 - 19 1. Obligation to hold Preconstruction Conference(s)
 - 20 ii. Obligation to hold Pre-Final Inspection(s)
 - 21 iii. Obligation to hold Final Inspection(s)
 - 22 iv. Applicable or Relevant and Appropriate Require-
ments, other than MCL violations
and South Coast Air Quality Management District
Regulation XIII

1	4. Class II Violations	
2	<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
3	Days 1 - 5	\$2,000
4	Days 6 - 30	\$4,000
5	After 30 Days	\$10,000
6	(a). Failure to submit any of the following:	
7	1. Draft Final Remedial Design Report(s)	
8	ii. Final Pre-Final Design Report(s)	
9	iii. Final Health and Safety Plan(s)	
10	iv. Final Preliminary Sampling Plan	
11	v. Final Interim Remedial Action Report(s)	
12	vi. Plan(s) for Satisfaction of Permit Requirements	
13	vii. Remedial Design Workplan(s)	
14	viii. Conceptual Remedial Design Report(s)	
15	(b). Each violation of the following:	
16	1. QA Project Plan(s)	
17	ii. Remedial Design Work Plan(s)	
18	iii. Plan(s) for Satisfaction of Permit Requirements	
19	iv. California South Coast Air Quality Management District Regulation XIII	
20	v. Preliminary Sampling Plan	
21	vi. Remedial Action Work Plan(s)	
22		
23	5. Class III Violations	
24	<u>Period of Noncompliance</u>	<u>Penalty Per Day Per Violation</u>
25	Days 1 - 5	\$5,000
26	Days 6 - 30	\$8,000
27	Days 30-60	\$15,000

1 After 60 Days \$20,000

2 (a). Failure to submit any of the following:

3 i. Final Remedial Design Report(s)

4 ii. Remedial Action Work Report(s)

5 iii. Operation & Maintenance Plan(s)

6 iv. Final QA Project Plan(s)

7 (b). Each violation of the following:

8 i. Operation & Maintenance Plan(s)

9 ii. Operation Sampling Plan(s)

10 E. With respect to the City, stipulated penalties shall ac-

11 crue in the following amounts, and, as provided in Subpart H of

12 Section XVII (Reservation and Waiver of Rights), the City may not

13 dispute the amount of stipulated penalties due per type of viola-

14 tion:

15 1. Monthly Progress Reports and Quarterly Quality Assurance

16 Reports

17 (a). The City shall pay a stipulated penalty of \$500 per day

18 for the submission of a late or deficient Monthly Progress

19 Report.

20 (b) The City shall pay a stipulated penalty of \$500 per day

21 for the submission of a late or deficient Quarterly Quality As-

22 surance Report.

23 2. Class I Violations

24 <u>Period of Noncompliance</u>	25 <u>Penalty Per Day Per Violation</u>
26 Days 1 - 5	\$500
27 Days 6 - 30	\$1,000
After 30 Days	\$2,500

1 (a). Each failure to comply in a timely and adequate manner

2 with the terms of this Consent Decree, including the Statement of

3 Work, and any documents incorporated into this Decree pursuant to

4 this Decree, that are not specifically listed as a violation un-

5 der Class II, and specifically including any failure to comply

6 with the substantive standards of any applicable or relevant and

7 appropriate requirement identified in the ROD (as modified by the

8 ESD and Subpart F of Section VII (Work To Be Performed)) not

9 identified as a violation under Class II; provided that the City

10 shall not be subjected to stipulated penalties for any require-

11 ment of this Decree that are solely the obligation of Lockheed

12 pursuant to this Decree.

13 3. Class II Violations

14 <u>Period of Noncompliance</u>	15 <u>Penalty Per Day Per Violation</u>
16 Days 1 - 5	\$1,000
17 Days 6 - 30	\$3,000
18 After 30 Days	\$10,000

19 (a). Failure to submit any the following:

20 i. Plan for Satisfaction of Permitting

21 Requirements

22 ii. QA Project Plan (or equivalent document(s)

23 pursuant to Subpart E of Section VIII

24 (Quality Assurance))

25 iii. Health and Safety Plan

26 iv. Operation and Maintenance Plan

27 (b). Failure to comply with any of the following:

i. Plan for Satisfaction of Permitting

Requirements

ii. QA Project Plan (or equivalent document(s))
pursuant to Subpart E of Section VIII
(Quality Assurance))

iii. Health and Safety Plan

iv. Operation and Maintenance Plan

F. All stipulated penalties owed pursuant to this Decree shall be paid by certified check made payable to the "EPA-Hazardous Substance Superfund" within thirty (30) days after receipt of EPA's notice of deficiency by the Settling Work Defendant that it failed to meet a requirement of this Decree. Interest shall begin to accrue on any penalty due thirty (30) days after that Settling Work Defendant receives EPA's notice of deficiency. A copy of the check and a copy of the letter forwarding the check, which letter shall include a brief description of the alleged violation, Settling Work Defendant's complete and correct address, the Operable Unit name, the Site spill identifier number (SSID #L6), the civil action number, and the date of receipt of EPA's notice of deficiency shall be submitted to the EPA Project Coordinator, the EPA Assistant Regional Counsel, and the United States Department of Justice at the addresses to which notice is to be provided pursuant to Section XXIII (Form of Notice). The check and the original copy of the letter shall be sent to:

U.S. Environmental Protection Agency
Region IX
Superfund Accounting
P.O. Box 360863M
Pittsburgh, PA 15251
Attention: Collection Officer for Superfund

If a Settling Work Defendant fails to pay stipulated penalties in accordance with this Section, the United States may institute proceedings in this action or a new action to collect the penalties and any interest due.

G. Notwithstanding the stipulated penalties provided for in this Section, and to the extent authorized by law, EPA may elect to assess civil penalties or bring an action in District Court to enforce the provisions of this Consent Decree. Payment of stipulated penalties shall not preclude EPA from electing to pursue any other remedy or sanction it may have to enforce this Consent Decree, and nothing in this Decree shall preclude EPA from seeking statutory penalties against a Settling Defendant who violates statutory or regulatory requirements, except that the total civil penalties (including stipulated penalties) collected by EPA for any such violation shall not exceed \$25,000 per day per violation.

H. Each Settling Work Defendant may dispute any notice of deficiency issued to it. Penalties shall continue to accrue as provided in this Section but need not be paid until the following:

1. If the dispute is resolved by agreement or by decision or order of EPA which is not appealed to this Court, accrued penalties, plus interest at the rate specified in 28 U.S.C. § 1961, shall be paid to EPA within thirty (30) days of the agreement or Settling Work Defendant's receipt of EPA's decision or order;

1 2. If a Settling Work Defendant appeals EPA's decision
2 pursuant to Subpart C of Section XX (Dispute Resolution) and
3 prevails upon final resolution of the dispute, no stipulated
4 penalties or interest thereon will be payable and any assessment
5 of stipulated penalties and interest thereon shall be set aside
6 in writing by EPA.

7 3. If a Settling Work Defendant appeals EPA's decision
8 pursuant to Subpart C of Section XX (Dispute Resolution) and does
9 not prevail upon final resolution of the dispute, all accrued
10 stipulated penalties, plus interest at the rate specified in 28
11 U.S.C. § 1961, shall be paid within thirty (30) days of a final
12 court order.

13 I.1. In the event that, pursuant to Subpart AA of Section
14 VII (Work To Be Performed), EPA assumes performance of all or a
15 portion of the Work that Lockheed is required by this Decree to
16 perform, Lockheed shall, in lieu of any other penalties that
17 might be payable under this Decree, pay a Work Assumption Penalty
18 in the amount of one million dollars (\$1,000,000.00). Lockheed
19 is not required to pay a Work Assumption Penalty if EPA takes
20 over the Work pursuant to Subpart C(2) of Section XVII
21 (Reservation and Waiver of Rights).

22 2. In the event that, pursuant to Subpart AA of Section VII
23 (Work To Be Performed), EPA assumes performance of all or a por-
24 tion of the Work that the City is required by this Decree to per-
25 form, the City shall, in lieu of any other penalties that might
26 be payable under this Decree, pay a Work Assumption Penalty in
27 the amount of two hundred and fifty thousand dollars

1 (\$250,000.00). The City is not required to pay a Work Assumption
2 Penalty if EPA takes over the Work pursuant to Subpart C(2) of
3 Section XVII (Reservation and Waiver of Rights).

4 3. Payment of the Work Assumption penalties provided for in
5 this Subpart H shall be in addition to any stipulated penalties
6 which accrued prior to a Settling Work Defendant's receipt of
7 EPA's notice of intent to take over all or a portion of the Work.
8 Unless waived by EPA, such Work Assumption Penalty shall be pay-
9 able within thirty (30) days after a Settling Work Defendant's
10 receipt of notice that EPA intends to take over all or a portion
11 of the Work. However, if that Settling Work Defendant invokes
12 the dispute resolution procedure, payment of its Work Assumption
13 Penalty shall be tolled until thirty (30) days after final
14 resolution of the dispute; provided, however, that that Settling
15 Work Defendant shall not pay any Work Assumption Penalty or,
16 pre-assumption penalties related to the issue(s) on which that
17 Settling Work Defendant prevails, or interest thereon if it is
18 determined that EPA's takeover of the Work of that Settling Work
19 Defendant was not permitted pursuant to Subpart Y of Section VII
20 (Work to Be Performed).

21 XX. DISPUTE RESOLUTION

22 A. As required by Section 121(e) of CERCLA, 42 U.S.C. §
23 9621(e), the Settling Parties shall attempt to resolve ex-
24 peditiously and informally any disagreements arising under or
25 from the implementation of this Decree or any Work required
26 hereunder.

27

1 B. If a dispute arises with respect to the meaning or ap-
2 plication of this Decree, other than one regarding the amount of
3 stipulated penalties due per type of violation, the dispute shall
4 in the first instance be the subject of informal good-faith nego-
5 tiations between EPA and the appropriate Settling Defendant(s)
6 pursuant to Subpart C of this Section. In the event that the
7 parties cannot resolve the dispute, the interpretation advanced
8 by EPA shall be considered binding unless a Settling Defendant
9 invokes the dispute resolution provisions of Subpart F of this
10 Section. The decision to invoke dispute resolution shall not in
11 and of itself constitute a force majeure. Settling Defendants
12 reserve the right to dispute a determination by EPA that a force
13 majeure has not occurred.

14 C. If a Settling Defendant has a good-faith objection to a
15 decision by EPA with respect to Covered Matters or if a Settling
16 Defendant believes that it has otherwise reached an impasse with
17 EPA with regard to the requirements or interpretation of this
18 Consent Decree, that Settling Defendant shall notify EPA's
19 Project Coordinator and EPA's Office of Regional Counsel in writ-
20 ing of its position, within fourteen (14) days of receipt of
21 EPA's decision or of determining that an impasse has been
22 reached. EPA and the Settling Defendant shall then have fourteen
23 (14) days from EPA's receipt of the written notice to resolve the
24 matter. If possible, the dispute shall be resolved by informal
25 telephone conferences. Either EPA or the Settling Defendant may
26 also request that the parties meet and confer to try to resolve
27 the dispute within the fourteen (14) day period. By the end of

1 the foregoing fourteen (14) day period or within seven (7) days
2 after the parties meet and confer, whichever is later, EPA shall
3 issue a written decision regarding the dispute.

4 D. Invocation of the Dispute Resolution procedure, by it-
5 self, will not postpone the Work schedule with respect to any
6 disputed issue or stay the accrual of stipulated penalties. EPA
7 agrees not to demand payment of penalties and interest accrued
8 until completion of the Dispute Resolution process.

9 E. If a Settling Defendant chooses not to follow EPA's
10 decision regarding the dispute, that Settling Defendant may file
11 with the Court a petition briefly describing the nature of the
12 dispute and its suggested resolution. Such a petition shall not
13 be filed before EPA has issued its written determination pursuant
14 to Subpart C of this Section and shall not be filed more than
15 thirty (30) days after EPA has issued such determination. EPA
16 shall have thirty (30) days to respond to the petition.

17 F. In any dispute resolution proceeding regarding selec-
18 tion of the remedial action, the Court shall uphold EPA's deci-
19 sion unless the Settling Defendant can demonstrate on the basis
20 of the Administrative Record that EPA's decision was arbitrary
21 and capricious or not otherwise in accordance with the law, as
22 set forth in CERCLA Section 113(j)(2), 42 U.S.C. § 9613(j)(2).
23 In any dispute involving a claim of force majeure, the Settling
24 Defendant shall have the burden of proving by a preponderance of
25 the evidence that any delay was, is or will be caused by events
26 beyond its control and that the duration of any delay requested
27 by a Settling Defendant is necessitated by the force majeure. In

1 all other disputes, the standard of review shall be determined by
2 the Court in accordance with general principles of administrative
3 law. In all disputes, the Settling Defendant shall have the bur-
4 den of proof. Upon this Court's resolution of the dispute,
5 stipulated penalties shall be paid or set aside in accordance
6 with Subpart H of Section XIX (Stipulated Penalties). A finding
7 that a Settling Defendant has prevailed shall not excuse stipu-
8 lated penalties for failure to perform requirements not in dis-
9 pute, except to the extent a Settling Defendant can show that it
10 was impracticable to perform those requirements pending resolu-
11 tion of the dispute. If the Settling Defendant prevails, the
12 deadlines for any requirements which Settling Defendants could
13 not practicably meet during the dispute resolution proceedings
14 shall be extended to account for any delays attributable to such
15 proceedings.

16 XXI. FORCE MAJEURE

17 A. The Settling Parties agree that time is of the essence
18 in the implementation of this Consent Decree. Settling Defen-
19 dants shall perform all the requirements of this Consent Decree
20 according to the schedules set forth herein or established
21 hereunder or any approved modifications thereto unless their per-
22 formance is prevented or delayed by events which constitute a
23 force majeure.

24 B. For the purposes of this Decree, a force majeure is
25 defined as any event arising from causes beyond the control of a
26 Settling Defendant or its contractors, subcontractors or consult-
27 ants, which delays or prevents that Settling Defendant's perfor-

1 mance notwithstanding that Settling Defendant's best efforts to
2 avoid the delay. This requirement that a Settling Defendant ex-
3 ercise "best efforts to avoid the delay" includes using best ef-
4 forts to anticipate any potential force majeure event and to ad-
5 dress the effects of any force majeure event (1) as it is occur-
6 ring and (2) following the force majeure event, such that any
7 delay is minimized to the greatest extent practicable. Neither
8 economic hardship nor increased costs shall be considered a force
9 majeure. A force majeure may include, but is not limited to, ex-
10 traordinary weather events, natural disasters, national emer-
11 gencies, failure by the other Settling Work Defendant to perform
12 Work that is necessary for the Settling Work Defendant asserting
13 a force majeure to perform its obligations, delays in obtaining
14 access to property not owned or controlled by the Settling Defen-
15 dant, despite timely, best reasonable efforts to obtain such ac-
16 cess, and delays in obtaining any required approval or permit
17 from EPA or other governmental entities that result despite the
18 Settling Defendant's submission of all information and documenta-
19 tion reasonably required for approval or applications for permits
20 (and any supplemental information and documentation that may
21 reasonably be requested) within a time frame that would permit
22 the Work to proceed in accordance with the schedule contained in
23 or established pursuant to this Decree.

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1 C. If a Settling Defendant invokes force majeure, it shall
2 have the burden of proving by a preponderance of the evidence
3 that any delay was, is or will be caused by events beyond its
4 control and that the duration of any extension requested is
5 necessitated by the force majeure.

6 D. In the event of a force majeure, the time for perfor-
7 mance of the activity delayed by the force majeure shall be ex-
8 tended for the minimum time necessary to allow completion of the
9 delayed activity. The time for performance of any activity by
10 any Settling Defendant dependent on the delayed activity shall be
11 similarly extended. An extension of the time for performance of
12 an obligation directly affected by the force majeure event shall
13 not, of itself, extend the time for performance of any subsequent
14 obligation unless the subsequent obligation is dependent upon the
15 obligation directly affected. EPA shall determine whether re-
16 quirements are to be delayed and the time period granted for any
17 delay. Settling Defendants shall exercise best efforts to avoid
18 or minimize any delay and any effects of a delay caused by a
19 force majeure.

20 E. In the event of a force majeure, any Settling
21 Defendant(s) asserting force majeure shall orally notify EPA's
22 Project Coordinator or, in his or her absence, the Director of
23 the Hazardous Waste Management Division, EPA, Region IX, im-
24 mediately (no later than 48 hours after that Settling Defendant
25 becomes aware of the force majeure) and shall notify EPA in writ-
26 ing within ten (10) calendar days after discovery of the force
27 majeure. The written notification shall describe the force

1 majeure, the anticipated length of any delay, any measures which
2 that Settling Defendant is taking or plans to take to mitigate
3 the event or the delay and a schedule for implementation of such
4 measures, and a statement as to whether, in the opinion of that
5 Settling Defendant, such event may cause or contribute to an en-
6 dangerment to public health, welfare, or the environment.

7 F. Failure of a Settling Defendant to comply with the
8 notification requirements of this Section shall result in forfei-
9 ture of its right to claim a force majeure delay.

10 XXII. CONTRIBUTION PROTECTION

11 With regard to claims for contribution against Settling
12 Defendants for matters addressed in this Consent Decree, the Set-
13 tling Parties agree that Settling Defendants are entitled, as of
14 the effective date of this Decree, to such protection from con-
15 tribution actions or claims as provided in CERCLA Section
16 113(f)(2), 42 U.S.C. § 9613(f)(2); provided, however, that each
17 Settling Defendant expressly waives the provisions of CERCLA Sec-
18 tion 113(f)(2), 42 U.S.C. § 9613(f)(2), as against any other Set-
19 tling Defendant, and reserves its right to pursue any other Set-
20 tling Defendant(s) for the cost of response activities related to
21 the Site and the City reserves its rights (if any) to pursue any
22 other Settling Defendant for any damages to natural resources.

23 XXIII. FORM OF NOTICE

24 A. Except insofar as oral notification is specifically
25 provided for in this Decree, when notification to or communica-
26 tion with the United States Department of Justice, EPA, Lockheed,
27

1 Weber or the City is required by the terms of this Consent
2 Decree, it shall be in writing, postage prepaid, and addressed as
3 follows:

4 As to EPA:

5 EPA Project Coordinator - Burbank Operable Unit
6 San Fernando Valley Basin Superfund Site
7 Hazardous Waste Management Division
8 Superfund Program, Region IX
9 United States Environmental Protection Agency
10 75 Hawthorne Street
11 San Francisco, CA 94105

12 and

13 Assistant Regional Counsel - Burbank Operable Unit
14 San Fernando Valley Basin Superfund Site
15 Office of Regional Counsel, Regional IX
16 United States Environmental Protection Agency
17 75 Hawthorne Street
18 San Francisco, CA 94105

19 As to the United States Department of Justice:

20 Chief
21 Environmental Enforcement Section
22 Environment and Natural Resources Division
23 United States Department of Justice
24 Ben Franklin Station, P.O. Box 7611
25 Washington, D.C. 20044-7611

26 As to Lockheed:

27 Ron Helgersen
Lockheed Engineering and Sciences Company
1903 West Empire, Unit 33
Burbank, California 91504

28 As to City:

29 General Manager
30 City of Burbank
31 Public Service Department
32 164 West Magnolia Blvd.
33 Burbank, California 91503-0631

34 and

35

1 Carolyn Barnes, Esquire
2 Office of the City Attorney
3 275 East Olive
4 Burbank, California 91510-6459

5 As to Weber:

6 George H. Hampstead
7 Weber Aircraft, Inc.
8 100 Wood Avenue, South
9 Iselin, New Jersey 08830

10 B. A Settling Party may change its address for purposes of
11 this Decree by mailing notice of a change of address to the other
12 Settling Parties.

13 C. In the case of written notices or submittals, a notice
14 or submittal shall be deemed to have occurred on the date the
15 notice or submittal is received by the party to whom notice must
16 be given or a document must be submitted pursuant to this Decree.

17 XXIV. MODIFICATION

18 A. Except as provided in Subpart B of this Section and in
19 Subpart B of Section XXIII (Form of Notice), there shall be no
20 modification of this Consent Decree without written approval of
21 the Settling Parties and entry by the Court.

22 B. The United States and the appropriate Settling Work
23 Defendant(s) may agree to modify the Statement of Work and any
24 documents or deliverables approved by EPA pursuant to this
25 Decree. Any such modification must be in writing and must be
26 signed by EPA and the Settling Work Defendant(s) affected by the
27 modification, and shall be sent to all Settling Defendants within
ten days of execution. No such modifications shall change (1)
any of the requirements of the body of the Consent Decree (i.e.,

1 the Consent Decree exclusive of those attachments which have been
2 incorporated into the Decree by reference), (2) the ROD or (3)
3 the ESD.

4 XXV. ADMISSIBILITY OF DATA

5 In the event that the Court is called upon to resolve a dis-
6 pute concerning implementation of this Consent Decree, the Set-
7 tling Parties waive any evidentiary objections to the admis-
8 sibility into evidence of data gathered, generated, or evaluated
9 pursuant to this Decree that has been verified using the quality
10 assurance and quality control procedures specified in the Quality
11 Assurance Project Plan(s) approved pursuant to this Decree.

12 XXVI. EFFECTIVE DATE

13 This Consent Decree is effective upon the date of its entry
14 by the Court.

15 XXVII. COMMUNITY RELATIONS

16 The Settling Work Defendants shall cooperate with EPA and
17 the State in providing information to the public.

18 XXVIII. PUBLIC PARTICIPATION

19 A. The United States will publish notice of the
20 availability for review and comment of this Consent Decree upon
21 its lodging with the United States District Court as a proposed
22 settlement in this matter in accordance with CERCLA Section
23 122(d)(2)(i), 42 U.S.C. § 9622(d)(2)(i).

24 B. The United States will provide persons who are not
25 parties to the proposed settlement with the opportunity to file
26 written comments during at least a thirty (30) day period follow-
27 ing such notice. In addition, EPA intends to hold an informal

1 public meeting in Burbank, California during this period to
2 receive either written or oral comments. The United States will
3 file with the Court a copy of any comments received and its
4 responses to such comments.

5 C. After the close of the public comment period, the United
6 States will review all comments and determine whether the com-
7 ments disclose facts or considerations which indicate that the
8 proposed Decree is inappropriate, improper or inadequate and that
9 it therefore should be modified. No Settling Party shall be
10 bound by modifications to this Decree without its prior written
11 consent, and consent to this Decree is not consent to such
12 modifications.

13 XXIX. NOTICE TO THE STATE

14 EPA has notified the State of California pursuant to Section
15 106(a) of CERCLA, 42 U.S.C. § 9606(a) prior to entry of this
16 Decree.

17 XXX. CONSISTENCY WITH THE NATIONAL CONTINGENCY PLAN

18 The Settling Parties agree, and the Court finds, that the
19 Work, if performed in accordance with the requirements of this
20 Consent Decree, is consistent with the provisions of the NCP,
21 pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605.

22 XXXI. INDEMNIFICATION OF THE UNITED STATES

23 A.1. Notwithstanding any approvals which may be granted by
24 the United States or other governmental entities, Lockheed shall
25 indemnify the United States and any of its divisions, depart-
26 ments, agents or employees and save and hold the United States,
27 any of its divisions, departments, agents or employees harmless

1 from any claims or causes of action (except to the extent that
2 such indemnification or holding harmless would conflict with
3 rights or obligations of the United States or Lockheed pursuant
4 to any contract between Lockheed and the United States or between
5 Lockheed and any government contractor(s)), arising from any in-
6 juries or damages to persons or property resulting from any acts
7 or omissions of Lockheed, its contractors, subcontractors or any
8 other person acting on its behalf in carrying out any activities
9 pursuant to the terms of this Decree.

10 2. Notwithstanding any approvals which may be granted by
11 the United States or other governmental entities, the City shall
12 indemnify the United States and any of its divisions, depart-
13 ments, agents or employees and save and hold the United States,
14 any of its divisions, departments, agents or employees harmless
15 from any claims or causes of action, arising from any injuries or
16 damages to persons or property resulting from any acts or omis-
17 sions of the City, its contractors, subcontractors or any other
18 person acting on its behalf in carrying out any activities pur-
19 suant to the terms of this Decree.

20 B. The indemnifications provided in Subpart A of this Sec-
21 tion do not include an obligation to defend the United States or
22 persons acting on its behalf in any action relating to this Con-
23 sent Decree or the Work and do not extend to that portion of any
24 claim or cause of action attributable to the negligent, wanton or
25 willful acts or omissions of the United States, its contractors,
26 subcontractors or any other person or entity acting on its behalf
27 in carrying out activities at or related to the Site.

1 C.1. The United States shall use its best efforts to notify
2 Lockheed of any claims or causes of action described in Subpart
3 A.1 of this Section within sixty (60) days of receiving notice
4 that such a claim or cause of action has been filed and shall use
5 its best efforts to provide Lockheed with a reasonable oppor-
6 tunity to confer with the United States before the United States
7 settles or resolves such a claim or cause of action; provided,
8 however, that failure on the part of the United States to provide
9 such notice and/or such opportunity to confer shall not preclude
10 the United States from obtaining indemnification from Lockheed
11 pursuant to this Section.

12 2. The United States shall use its best efforts to notify
13 the City of any claims or causes of action described in Subpart
14 A.2 of this Section within sixty (60) days of receiving notice
15 that such a claim or cause of action has been filed and shall use
16 its best efforts to provide the City with a reasonable oppor-
17 tunity to confer with the United States before the United States
18 settles or resolves such a claim or cause of action; provided,
19 however, that failure on the part of the United States to provide
20 such notice and/or such opportunity to confer shall not preclude
21 the United States from obtaining indemnification from the City
22 pursuant to this Section.

23 3. Settling Defendants retain the right to intervene in any
24 court action against the United States pursuant to Section 113(i)
25 of CERCLA, 42 U.S.C. § 9613(i), if appropriate, and to seek in-
26 tervention under the provisions of F.R.Civ.P. 24 and California
27 Code of Civil Procedure Section 387.

1 **XXXII. OTHER CLAIMS**

2 This Consent Decree does not constitute a preauthoriza-
3 tion of funds under Section 111(a)(2) of CERCLA, 42 U.S.C. §
4 9611(a)(2). In consideration of entry of this Consent Decree,
5 Settling Defendants agree not to make any claims directly or in-
6 directly against the Hazardous Substance Superfund for costs ex-
7 pended by or on behalf of Settling Defendants in connection with
8 this Decree under CERCLA Sections 112 or Section 106(b)(2), 42
9 U.S.C. §§ 9612, 9606(b)(2), or any other provision of law and
10 agree not to make any other claims against the United States for
11 costs expended by or on behalf of any Settling Defendant in con-
12 nection with this Consent Decree, except insofar as a Settling
13 Defendant has reserved such rights pursuant to Subpart C of Sec-
14 tion XVII (Reservation and Waiver of Rights).

15 **XXXIII. CONTINUING JURISDICTION**

16 The Court specifically retains jurisdiction over both the
17 subject matter of and the parties to this action for the duration
18 of this Consent Decree for the purpose of issuing such further
19 orders or directions as may be necessary or appropriate to con-
20 strue, implement, modify, enforce, terminate, or reinstate the
21 terms of this Consent Decree or for any further relief as the in-
22 terest of justice may require.

23 **XXXIV. TERMINATION AND SATISFACTION**

24 A. Upon Settling Defendants' completion of all of the Work
25 to be performed pursuant to this Consent Decree, including
26 achievement of all of the requirements imposed upon Settling
27 Defendants by Section VII (Work To Be Performed) and Section XVI

1 (Reimbursement of Future Response Costs), Settling Work Defen-
2 dants shall submit to EPA a written certification (Certificate of
3 Completion) that the Work has been completed in accordance and in
4 full compliance with this Decree. Within ninety (90) days of
5 receipt of a request for such certification, EPA shall approve or
6 disapprove the certification. If EPA fails to approve or disap-
7 prove the certification within ninety (90) days of receipt of a
8 request for such certification, Settling Work Defendants may in-
9 voke the dispute resolution procedures of Section XX (Dispute
10 Resolution). Upon EPA approval of the Certification of Comple-
11 tion, the covenants not to sue pursuant to Subpart A.1 of Section
12 XVIII (Covenant Not To Sue) shall take effect.

13 B. Upon EPA's approval of the Certification of Completion,
14 the requirements of this Decree, including Settling Work Defen-
15 dants' obligations for Covered Matters, other than Section XIV
16 (Retention of Records) and Subpart C of Section VII (Work To Be
17 Performed), shall be deemed satisfied; provided, however, that
18 such termination and satisfaction shall not alter the provisions
19 of Section XVII (Reservation and Waiver of Rights), Section XXII
20 (Contribution Protection), Section XVIII (Covenant Not To Sue) or
21 any other continuing rights or obligations of the Settling
22 Parties under this Decree.

23 C. If at any point EPA takes over the remainder of the
24 Work pursuant to Section VII (Work To Be Performed), then this
25 Decree shall terminate when EPA finishes the Work; provided,
26 however, that termination of this Decree shall not terminate
27 Lockheed's obligations under Section XVI (Reimbursement of Future

1 Response Costs) to pay Future Response Costs incurred before the
2 termination of this Decree, nor shall it alter the provisions of
3 Section XVII (Reservation and Waiver of Rights) or any other con-
4 tinuing rights or obligations of the Settling Parties under this
5 Decree.

6 **XXXV. SECTION HEADINGS**

7 The section heading set forth in this Decree and its

8 Table of Contents are included for convenience of reference only
9 and shall be disregarded in the construction and interpretation
10 of any of the provisions of this Decree.

FOR THE PLAINTIFF, UNITED STATES:

BARRY M. HARTMAN
BARRY M. HARTMAN
Acting Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20044

DATE: 7/24/91

United States Attorney

DATE: _____

Assistant United States Attorney

RAYMOND B. LUDWISZEWSKI
RAYMOND B. LUDWISZEWSKI
Acting Assistant Administrator for
Office of Enforcement
U.S. Environmental Protection Agency
401 M. Street, S.W.
Washington, D.C. 20460

DATE: 5/6

WILLIAM A. WEINISCHKE
WILLIAM A. WEINISCHKE
Trial Attorney
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ron Franklin Station
Washington, D.C. 20044

DATE: 7/1/91

Daniel W. McGovern
DANIEL W. MCGOVERN
Regional Administrator
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, CA 94105

DATE: 3-29-91

The undersigned Defendant hereby Consents to the foregoing Consent Decree.

For Defendant: The City of Burbank

Dated: March 27, 1991

Name:

Thomas Flavin

Signature:

[Signature]

Title:

Mayor, City of Burbank

ATTEST:

[Signature]
City Clerk

1 The undersigned Defendant hereby Consents to the foregoing Con-
2 sent Decree.
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4

5 For Defendant: Lockheed Corporation

6 Dated: March 13, 1991
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8
9

10 Name: E. A. Thompson

11 Signature: E. A. Thompson

12 Title: Vice President - Operations
13 Lockheed Corporation
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1 The undersigned Defendant hereby Consents to the foregoing Con-
2 sent Decree.
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4

5 For Defendant: Weber Aircraft, Inc.

6 Dated: March 18, 1991
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8
9

10 Name: George H. Hempstead

11 Signature: George H. Hempstead

12 Title: Vice President
13 Weber Aircraft, Inc.
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**CONSENT DECREE
LIST OF APPENDICES**

Appendix A. Record of Decision, June 30, 1989

**Appendix B. Explanation of Significant Differences, November 21,
1990**

Appendix C. Map of Corrected Well Locations

Appendix D. Statement of Work

Appendix E. Schematics

Appendix F. Plot Map of Valley Forebay Facility